



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 27, 2015 Government Records Council Meeting

Robert Kovacs
Complainant

Complaint No. 2014-316

v.

Newark Police Department (Essex)
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 2015 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:

1. The Council should reconsider its decision based on “extraordinary circumstances.” The Custodian submitted certifications identifying the immense burden that would be placed on him were he required to conduct a search for arrest reports spanning from the Complainant’s date of birth to the date he submitted his OPRA request. Therefore, the Custodian has established in his request for reconsideration of the Council’s June 30, 2015, Interim Order that: 1) the Council’s decision is based upon a “palpably incorrect or irrational basis,” and 2) the Council acted unreasonably or arbitrarily. To wit, the provided evidence challenges the validity of the Complainant’s OPRA request based upon the Complainant’s failure to identify explicitly a date range, and the circumstances in which the Newark Police Department archives its criminal records prior to 2007. Thus, the Custodian’s request for reconsideration is granted. Cummings v. Bahr, 295 N.J. Super. at 384; 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 Atlantic City, Cnty. of Atlantic, State of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. The Council should rescind paragraphs 1-3 of its June 30, 2015, Interim Order and find that the Complainant’s request was invalid for failing to identify a date or range of dates to conduct a search for arrest reports. Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015), Kovacs v. Woodbridge Police Dep’t (Middlesex), GRC Complaint No. 2014-273 (May 2015). A date range cannot be inferred by the mere mention of a date of birth. The requestor bears the burden to identify a date range in an OPRA request for arrest reports. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Additionally, because the Custodian



lawfully denied access to the responsive records, the Council need not address a possible knowing and willful violation.

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 27th Day of October, 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: October 29, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting

Robert Kovacs¹
Complainant

GRC Complaint No. 2014-316

v.

Newark Police Department (Essex)²
Custodial Agency

Records Relevant to Complaint:

“One copy of each arrest report or any other releasable police report containing the name, or pertaining to the name “Robert Kovacs,” Date of birth 11-15-66, Social Security # [XXX-XX-XXXX], SBI# 252748-B, which is myself, and my own personal records I am requesting.”

Custodian of Records: Kenneth Louis³
Request Received by Custodian: August 22, 2014
Response Made by Custodian: August 22, 2014
GRC Complaint Received: September 9, 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 bear his burden of proof that he lawfully denied access to the requested records. N.J.S.A. 47:1A-6. The Complainant’s request seeking any and all arrest records under his name included sufficiently identifiable information for the Newark Police Department to conduct a search. *See Burke v. Brandes*, 429 N.J. Super. 169, 176 (App. Div. 2012), Dawara v. Office of the Essex Cnty. Adm’r, GRC Complaint No. 2013-267 (March 2014), and Morgano v. Essex Cnty. Prosecutor’s Office, GRC

¹ No legal representation listed on record.

² Represented by Aravind Aithal, Esq., of Bob Smith & Associates (Piscataway, NJ).

³ At the time of the OPRA request, Robert P. Marasco was the Records Custodian for the Newark Police Department, but retired as of January 1, 2015.

Complaint No. 2007-156 (February 2008). Accordingly, the Custodian shall conduct a search and provide the Complainant with any responsive arrest records.

2. **The Custodian shall comply with item number one (#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 1:4-4,⁴ to the Executive Director.⁵**
3. 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 9, 2015, the Custodian filed a request for reconsideration of the Council's June 30, 2015, Interim Order based on new evidence, extraordinary circumstances, and illegality. The Custodian's reconsideration application included certifications from Detective Olga Perez and Jose Da Silva. The Custodian first certified that no responsive records were located in a search of arrest reports from 2007 to the present using the Newark Police Department's ("NPD") "Records Management System." Mr. Da Silva certified that he attempted an electronic search for records using the Complainant's State Bureau of Identification ("SBI") number. He certified that records located using the Complainant's SBI number failed to match precisely the Complainant's name, date of birth ("DOB"), and Social Security Number ("SSN"). According to Mr. Da Silva's certification, some of the located arrest reports contained the Complainant's name but slightly different DOB and SSN, while others had the correct DOB but slightly different last name. Therefore, the Custodian withheld disclosure in the interests of privacy, since he could not verify that the records involved the Complainant.

Additionally, the Custodian contended that enforcement of the Interim Order requires him to conduct research. The Custodian and Mr. Da Silva certified that criminal history records for the NPD prior to 2007 are kept via microfilm and are inaccessible through an electronic database. Additionally, Mr. Da Silva certified that the microfilm is catalogued by Central Complaint ("CC") number, rather than by name or an individual's SBI number. Mr. Da Silva explained that since the Complainant failed to provide any CC number or date of incident, he is unable to conduct a search of the microfilm archives with reasonable efficiency. He certified that it might take more than a year to search microfilm records from 1966 (the Complainant's birth year) to the present without additional information.

⁴ "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."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If the Complainant incurred a copying or special service charge, 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.

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 Custodian filed the request for reconsideration of the Council's Order dated June 30, 2015, on July 9, 2015, six (6) business days from the issuance of the Council's Order.

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 the City of Atlantic City, Cnty. of Atlantic, State of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In the current matter, the Custodian argued that the GRC consider new evidence and that illegality and extraordinary circumstances warrant reconsideration. In support of his request for reconsideration, the Custodian attached certifications of individuals who conducted searches for records and with direct knowledge of NPD's criminal record archives. The certifications provided the following information:

1. That all arrest reports with the NPD created prior to 2007 are archived in microfilm and not electronically.
2. The microfilm archives are catalogued and organized by date and CC number and do not contain an index.
3. Without a CC number or date of incident, it could take up to a year to complete a search for the Complainant's arrest reports from his DOB to the date he submitted his OPRA request, which the GRC presumed to be a date range of his request.

The Custodian argued that the Complainant failed to identify explicitly a date or range of date of incidents. The Custodian further contends that relying solely upon the Complainant's DOB to infer a date range was incorrect.

The Council should decline to reconsider its decision based on "new evidence." The manner in which the NPD archives its arrest reports prior to 2007 existed at the time the Council rendered its decision, but the Custodian failed to mention that important fact in his Statement of Information ("SOI"). Nor should the Council reconsider the complaint based on "illegality." That a search for arrest reports may be burdensome to the Custodian or his agency does not in any way render the Council's decision illegal.

However, the Council should reconsider its decision based on "extraordinary circumstances." The Custodian submitted certifications identifying the immense burden that would be placed on him were he required to conduct a search for arrest reports spanning from the Complainant's DOB to the date he submitted his OPRA request. Therefore, the Custodian has established in his request for reconsideration of the Council's June 30, 2015, Interim Order that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis," and 2) the Council acted unreasonably or arbitrarily. To wit, the provided evidence challenges the validity of the Complainant's OPRA request based upon the Complainant's failure to identify explicitly a date range, and the circumstances in which the NPD archives its criminal records prior to 2007. Thus, the Custodian's request for reconsideration is granted. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6. The GRC must now consider the presented circumstances to determine if the Council's findings in its June 30, 2015, Interim Order should be amended or rescinded.

A valid request for records must be accompanied by a sufficient amount of identifying information. Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012). In a request for arrest records, such identifying information must include a date or range of dates. Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015). In Kovacs v. Woodbridge Police Dep't (Middlesex), GRC Complaint No. 2014-273 (May 2015), the Complainant sought arrest reports which pertain to a provided address. The Council found that the request was invalid because the Complainant failed to provide a date or range of dates in addition to the address.

In the current matter, the Complainant did not explicitly provide a date range for his request for arrest reports but did include his DOB. Rather, the GRC assumed a date range from his DOB to the date he submitted his OPRA request. The GRC now acknowledges that this was an incorrect assumption and, in light of the Custodian's provided certifications, insufficient under the standard set forth in Love and Kovacs. Providing a DOB aides the Custodian in identifying the subject matter of an arrest record, but that alone cannot constitute part of a date range from which to infer a key requirement in a valid request for arrest reports. The Complainant bears the burden to specify a date range from which the Custodian can conduct a search for arrest reports.

Therefore, the Council should rescind paragraphs 1-3 of its June 30, 2015, Interim Order and find that the Complainant's request was invalid for failing to identify a date or range of dates

to conduct a search for arrest reports. Love, GRC No. 2014-223, Kovacs, GRC No. 2014-273. A date range cannot be inferred by the mere mention of a DOB. The requestor bears the burden to identify a date range in an OPRA request for arrest reports. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Additionally, because the Custodian lawfully denied access to the responsive records, the Council need not address a possible knowing and willful violation.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Council should reconsider its decision based on “extraordinary circumstances.” The Custodian submitted certifications identifying the immense burden that would be placed on him were he required to conduct a search for arrest reports spanning from the Complainant’s date of birth to the date he submitted his OPRA request. Therefore, the Custodian has established in his request for reconsideration of the Council’s June 30, 2015, Interim Order that: 1) the Council’s decision is based upon a "palpably incorrect or irrational basis," and 2) the Council acted unreasonably or arbitrarily. To wit, the provided evidence challenges the validity of the Complainant’s OPRA request based upon the Complainant’s failure to identify explicitly a date range, and the circumstances in which the Newark Police Department archives its criminal records prior to 2007. Thus, the Custodian’s request for reconsideration is granted. Cummings v. Bahr, 295 N.J. Super. at 384; 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 Atlantic City, Cnty. of Atlantic, State of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. The Council should rescind paragraphs 1-3 of its June 30, 2015, Interim Order and find that the Complainant’s request was invalid for failing to identify a date or range of dates to conduct a search for arrest reports. Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015), Kovacs v. Woodbridge Police Dep’t (Middlesex), GRC Complaint No. 2014-273 (May 2015). A date range cannot be inferred by the mere mention of a date of birth. The requestor bears the burden to identify a date range in an OPRA request for arrest reports. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Additionally, because the Custodian lawfully denied access to the responsive records, the Council need not address a possible knowing and willful violation.

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Deputy Executive Director

October 20, 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

Robert Kovacs
Complainant

Complaint No. 2014-316

v.

Newark Police Department (Essex)
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 failed to bear his burden of proof that he lawfully denied access to the requested records. N.J.S.A. 47:1A-6. The Complainant’s request seeking any and all arrest records under his name included sufficiently identifiable information for the Newark Police Department to conduct a search. *See Burke v. Brandes*, 429 N.J. Super. 169, 176 (App. Div. 2012), *Dawara v. Office of the Essex Cnty. Adm’r*, GRC Complaint No. 2013-267 (March 2014), and *Morgano v. Essex Cnty. Prosecutor’s Office*, GRC Complaint No. 2007-156 (February 2008). Accordingly, the Custodian shall conduct a search and provide the Complainant with any responsive arrest records.
2. **The Custodian shall comply with item number one (#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**
3. 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.

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.



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**

**Robert Kovacs¹
Complainant**

GRC Complaint No. 2014-316

v.

**Newark Police Department (Essex)²
Custodial Agency**

Records Relevant to Complaint:

“One copy of each arrest report or any other releasable police report containing the name, or pertaining to the name “Robert Kovacs,” Date of birth 11-15-66, Social Security # [XXX-XX-XXXX], SBI# 252748-B, which is myself, and my own personal records I am requesting.”

Custodian of Records: Kenneth Louis³

Request Received by Custodian: August 22, 2014

Response Made by Custodian: August 22, 2014

GRC Complaint Received: September 9, 2014

Background⁴

Request and Response:

On August 5, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On August 22, 2014, the Custodian responded in writing, stating that the Complainant’s request was for information and not for a specific record. Further, the Custodian stated that he is not required to conduct research on behalf of the requestor and that OPRA “is not intended to be used as a research tool.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Additionally, the Custodian included an excerpt on how to obtain someone’s criminal history record via the New Jersey State Police (“NJSP”).

¹ No legal representation listed on record.

² Represented by James Nolan, Esq. (Woodbridge, NJ).

³ At the time of the OPRA request, Robert P. Marasco was the Records Custodian for the Newark Police Department, but he retired as of January 1, 2015.

⁴ 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 September 9, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that the Custodian avoided his duty to respond to his OPRA request by referring him to the NJSP. The Complainant also contended that his request contained clear identifying information that should have been sufficient to locate his requested records. The Complainant asserted that he believes this denial of access is evidence of discrimination against him as an inmate and as blatant disregard of his rights under OPRA.

Statement of Information:

On November 6, 2014, the Custodian filed a Statement of Information (“SOF”). The Custodian contended that the Complainant is using OPRA as a research tool, requiring the Custodian to search and evaluate several categories of documents pertaining to the identified address.

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 Entm’t, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (*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.

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);⁵ 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 was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. 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.

In Dawara v. Office of the Essex Cnty. Adm’r, GRC Complaint No. 2013-267 (March 2014), the Council held that a request for “police reports” was not overly broad, as the request was “confined to a specific subject matter.” Furthermore, the Council has long held that “arrest reports” are specifically identifiable records and subject to disclosure. See Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008).

However, a request for a specific type of document or subject matter must still contain sufficiently identifiable information. See Burke, 429 N.J. Super. at 176. In Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015), the complainant sought “police reports and/or complainants signed against [Kristen Ellis].” The Council held that while the complainant’s request for “police reports” and “complainants” reasonably described the subject matter, the complainant failed to provide a specific date or range of dates within his request. Id. at 3. The Council therefore found that the complainant’s request was overly broad. Id.

In the current matter, the Complainant’s request for his own “arrest reports” specifically identifies the subject matter and type of records sought. See Dawara, GRC No. 2013-267, and Morgano, GRC No. 2007-156. Furthermore, in contrast to the request in Love, the Complainant included his Social Security Number and date of birth (“DOB”) as identifying information. Combined with the date of his request, the Complainant’s DOB provided a date range (November 15, 1966 – August 5, 2014) for the Newark Police Department to conduct a search for records. Thus, the Complainant’s request contained sufficiently identifiable information. Burke, 429 N.J. Super. at 176.

Based on the foregoing, the Custodian failed to bear his burden of proof that he lawfully denied access to the requested records. N.J.S.A. 47:1A-6. The Complainant’s request seeking any and all arrest records under his name included sufficiently identifiable information for the Newark Police Department to conduct a search. See Burke, 429 N.J. Super. at 176, Dawara, GRC

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

No. 2013-267, and Morgano, GRC No. 2007-156. Accordingly, the Custodian shall conduct a search and provide the Complainant with any responsive arrest records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to bear his burden of proof that he lawfully denied access to the requested records. N.J.S.A. 47:1A-6. The Complainant's request seeking any and all arrest records under his name included sufficiently identifiable information for the Newark Police Department to conduct a search. *See* Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), Dawara v. Office of the Essex Cnty. Adm'r, GRC Complaint No. 2013-267 (March 2014), and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008). Accordingly, the Custodian shall conduct a search and provide the Complainant with any responsive arrest records.
2. **The Custodian shall comply with item number one (#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 1:4-4,⁶ to the Executive Director.⁷**
3. 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

⁶ "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."

⁷ 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.