



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

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

Clifford Wares  
Complainant

Complaint No. 2014-330

v.

Passaic 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 voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Records of external grievances, or complaints pertaining to excessive force or falsifying police reports, and complaints from the general public regarding law enforcement officers are exempt from disclosure as personnel records. 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). As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because such records are exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.
2. The Complainant's request seeking records of internal grievances and internal affairs records/investigations are exempt from public access pursuant to the IAPP, which classifies such records as confidential. See Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012), and Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010). Thus, there was no unlawful denial of access to such records. N.J.S.A. 47:A1-6; N.J. S.A. 47:1A-9.
3. While the Complainant's OPRA request specifically identified the subject matter pursuant to Paff v. Director, Office of Attorney Ethics, 399 N.J. Super. 632, 640 (Law Div. 2007), the request failed to include a date or range of dates and is thus overly broad. See MAG Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005), Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), and Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015). Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9.



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**

**Clifford Wares<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-330**

**v.**

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

**Records Relevant to Complaint:**

The personnel files (specifically, any internal and external grievances and complaints, attorney misconduct, prosecutorial misconduct, and attorney ethics violations) of the following prosecutors with the Passaic County Prosecutor's Office:

- 1) Prosecutor Camelia M. Valdes
- 2) Chief Assistant Prosecutor Christopher Hsieh
- 3) Deputy First Assistant Prosecutor Joanne Kaminski
- 4) Senior Assistant Prosecutor Sumana Mitra

The personnel files (specifically, any internal or external grievances and complaints, excessive use of force complaints, falsification and or forgery of government/police document complaints, internal affairs investigations, assault and harassment complaints and/or general public complaints/grievances) of the following officers with the Passaic County Prosecutor Extradition and Fugitives Unit:

- 1) Detective Michael Fertitta
- 2) Detective David Posada
- 3) Detective Jeffrey Hansen
- 4) Lt. Barry Feinberg

**Custodian of Records:** Mary Catherine Ryan  
**Request Received by Custodian:** August 28, 2014  
**Response Made by Custodian:** September 9, 2014  
**GRC Complaint Received:** September 29, 2014

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

<sup>2</sup> No legal representation listed on record.

## **Background**<sup>3</sup>

### Request and Response:

On August 28, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On September 9, 2014, the Custodian responded in writing, denying access to the requested records as personnel records not subject to disclosure under N.J.S.A. 47:1A-10. Further, the Custodian also stated that any records that are part of any internal affairs investigation are not subject to disclosure pursuant to “New Jersey Attorney General Guidelines, Internal Affairs Policy and Procedures.” Lastly, the Custodian stated that the remainder of the request was overly broad, as the Complainant used the terms “any and all,” “any,” and “general.”

### Denial of Access Complaint:

On September 29, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not articulate any specific objection to his Denial of Access. Rather, the Complainant referenced correspondence received by the Custodian.

### Statement of Information:

On November 26, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified generally that any responsive records to the Complainant’s request are either exempt from disclosure as personnel records, internal affairs records subject to the Attorney General’s Internal Affairs Policy & Procedure (“IAPP”),<sup>4</sup> or subject to the judiciary rules regarding misconduct complaints against attorneys.

The Custodian argued that the Complainant’s request for any and all internal and external grievances and complaints, internal attorney misconduct/ethical violations, complaints of excessive use of force or falsification of police documents, assault and harassment complaints, and general public complaints/grievances are all personnel records not subject to disclosure under N.J.S.A. 47:1A-10.

Regarding any external complaints filed against attorneys regarding ethical/misconduct violations, the Custodian certified that such complaints are subject to the confidentiality rules of the judiciary, including R. 1:38(d) and R. 1:20-9. *See Paff v. Director, Office of Attorney Ethics*, 399 N.J. Super. 632, 640 (Law Div. 2007) (“[t]he Supreme Court, similar to many other states, in exercising its administrative and plenary authority, has excluded from public access investigative files and materials prepared, obtained, or created prior to the filing of a [disciplinary] complaint”). The Custodian further noted that N.J.S.A. 47:1A-9 obligates the GRC to adhere to

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<sup>3</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>4</sup> The IAPP was promulgated via the Division of Criminal Justice in the New Jersey Department of Law and Public Safety. All GRC references to the IAPP are to the July 2014 revision of the document.

the judiciary's rules regarding this request.

Lastly, the Custodian contended that any request for internal affairs complaints/investigations against law enforcement officers, including those pertaining to excessive use of force, falsifying reports, etc., are not subject to disclosure pursuant to the IAPP, which explicitly states that internal affairs records are confidential information.<sup>5</sup> The Custodian added that N.J.S.A. 47:1A-9 also applies to the IAPP, citing O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 384 (App. Div. 2009).

### 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.

OPRA provides that its provisions:

- a. [S]hall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute . . . *regulation* promulgated under the authority of any statute or Executive Order of the Governor . . . *Rules of Court*; [or]
- b. [S]hall not abrogate or erode any . . . grant of confidentiality heretofore established or recognized by . . . *statute [or] court rule* . . . which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

N.J.S.A. 47:1A-9 (emphasis added).

#### Personnel Records

Regarding requests 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.

The Complainant sought copies of any external grievances or complaints pertaining to

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<sup>5</sup> See *infra*, pg. 4.

allegations of excessive force or falsifying police reports and complaints from the general public regarding four (4) named officers.

The Council has previously adjudicated complaints in which the records requested were external complaints filed against police officers. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), the Council held that:

The 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:

Although 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].

Records of external grievances, or complaints pertaining to excessive force or falsifying police reports, and complaints from the general public regarding law enforcement officers are exempt from disclosure as personnel records. N.J.S.A. 47:1A-10. *See also Merino*, GRC No. 2003-110; Vaughn, GRC No. 2009-177. As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because such records are exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.

#### Internal Affairs Investigations/Records

The Complainant also sought the "internal" complainants and grievances and internal affairs records pertaining to the named officers. The GRC notes that such records are not personnel records pursuant to the Internal Affairs Policy and Procedure guidelines. *See Blaustein v. Lakewood Police Dep't (Ocean)*, GRC Complaint No. 2011-102 (June 2012). Nevertheless, the IAPP exempts internal affairs records from disclosure, providing in part: "[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information."<sup>6</sup> Furthermore, the GRC has held that the IAPP and other Attorney General Guidelines have the force of law. *See Rivera v. Borough of Keansburg Police Dep't (Monmouth)*, GRC Complaint No. 2007-222 (June 2010) (*citing O'Shea v. Twp. of West Milford*, 410 N.J. Super. 371, 382 (App. Div. 2009)). In Rivera, the Administrative Law Judge

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<sup>6</sup> IAPP, Internal Affairs Records, pg. 42.

held that internal affairs reports are confidential records not subject to OPRA, relying upon the IAPP guidelines. Id.

The Complainant's request seeking records of internal grievances and internal affairs records/investigations are exempt from public access pursuant to the IAPP, which classifies such records as confidential. See Blaustein, GRC No. 2011-102, and Rivera, GRC No. 2007-222. Thus, there was no unlawful denial of access to such records. N.J.S.A. 47:A1-6; N.J.S.A. 47:1A-9.

#### Attorney Ethics/Misconduct Violations

The Complainant sought any "internal and external grievances and complaints, attorney misconduct, prosecutorial misconduct, attorney ethics violations, and prosecutorial ethics violations." The Custodian argued that the request was overly broad, as the Complainant's request did not specify the type of disciplinary action. Additionally, the Custodian stated that if the Custodian sought records of violations sustained because of an internal disciplinary proceeding, then they are exempt from disclosure as personnel records.

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);<sup>7</sup> 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).

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<sup>7</sup> Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

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.

However, a valid OPRA request for a specific type of document or subject matter must be accompanied by a sufficient amount of identifying 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.

Additionally, whereas the IAPP governs the confidentiality of records pertaining to internal affairs complaints of law enforcement officials, grievances and complaints filed against attorneys are filed with the Office of Attorney Ethics, an arm of the judiciary branch. N.J. Court Rule 1:20-1, *et seq.* Thus, the GRC agrees with the Custodian that R. 1:20-9 governs the confidentiality of records pertaining to attorney misconduct. N.J. S.A. 47:1A-9.

Once a disciplinary complaint is filed or certain motions are granted, some documents become subject to disclosure. *See* R. 1:20-9(a) and (c). In Paff v. Director, Office of Attorney Ethics, 399 N.J. Super. 632, 640 (Law Div. 2007), the plaintiff sought copies of “complaints, grievances, or other records” pertaining to the disbarment of an identified attorney. The Office of Attorney Ethics (“OAE”), subsequent to the attorney signing an affidavit of disbarment by consent, released said affidavit and the order of the New Jersey Supreme Court accepting the disbarment. Id. The plaintiff later filed a complaint seeking access to the investigative files pertaining to the disbarred attorney. Id. at 638. Yet, the court found that R. 1:20-9(a) strictly prohibits public disclosure of investigatory files, “whether or not an investigation is open or closed, and whether or not an attorney has been disciplined.” Id. at 652. Furthermore, the court held that the affidavit and Supreme Court order are “the only documents available to the public.” Id. Therefore, a custodian cannot impose a wholesale denial of a request for complaints and grievances filed against attorneys, because certain responsive records are subject to disclosure.

Here, notwithstanding the redundant phrasing, the Complainant’s request for “any and all complaints and grievances” against four (4) identified attorneys specifically identify the subject matter and type of records sought. *See* Paff, 399 N.J. Super. at 640. However, similar to the facts in Love, the Complainant failed to provide a specific date or range of dates to accompany his request. The names of the attorneys alone are insufficient identifying information. *See* Id.; Burke, 429 N.J. Super. at 176.



While the Complainant's OPRA request specifically identified the subject matter pursuant to Paff, 399 N.J. Super. at 640, the request failed to include a date or range of dates, and is thus overly broad. *See* MAG, 375 N.J. Super. at 549, Burke, 429 N.J. Super. at 176, and Love, GRC No. 2014-223. Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Records of external grievances, or complaints pertaining to excessive force or falsifying police reports, and complaints from the general public regarding law enforcement officers are exempt from disclosure as personnel records. 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). As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because such records are exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.
2. The Complainant's request seeking records of internal grievances and internal affairs records/investigations are exempt from public access pursuant to the IAPP, which classifies such records as confidential. *See* Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012), and Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010). Thus, there was no unlawful denial of access to such records. N.J.S.A. 47:A1-6; N.J. S.A. 47:1A-9.
3. While the Complainant's OPRA request specifically identified the subject matter pursuant to Paff v. Director, Office of Attorney Ethics, 399 N.J. Super. 632, 640 (Law Div. 2007), the request failed to include a date or range of dates and is thus overly broad. *See* MAG Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005), Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), and Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015). Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9.

Prepared By: Samuel A. Rosado  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

June 23, 2015