



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 30, 2015 Government Records Council Meeting

Jarett Saccento
Complainant

Complaint No. 2014-383

v.

Morris 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 written response is insufficient because the Custodian failed to provide a specific lawful basis for denying the requested records. N.J.S.A. 47:1A-5(g). See also Morris v. Trenton Police Dep't, GRC Complaint No. 2007-160 (May 2008), and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
2. Because the Custodian did not deny access to the records described in the Denial of Access Complaint (a description that differs from the original OPRA request), this complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e). See also Burns v. NJ Dep't of State, Div. of Elections, GRC Complaint No. 2013-64 (September 2013).

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 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 2, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Jarett Saccento¹
Complainant**

GRC Complaint No. 2014-383

v.

**Morris County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Mailed copies of:

1. Search warrants and affidavits under MRS-09-00932-001, filed on April 14, 2009.
2. Search warrants and affidavits under FJ-14-001489-07, filed on April 06, 2007.³

Custodian of Record: Michelle Rhinesmith
Request Received by Custodian: September 12, 2014
Response Made by Custodian: September 23, 2014
GRC Complaint Received: November 17, 2014

Background⁴

Request and Response:

On September 12, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On September 23, 2014, the seventh (7th) business day following receipt of said request, the Custodian responded in writing, informing the Complainant that she was disclosing a copy of the Judgment of Conviction in regards to Indictment No. 10-04-00376-Z. The Custodian also informed the Complainant that she was disclosing copies of the Complaint and the Judgment of Conviction in regards to complaints filed in 2009. The Custodian further informed the Complainant that "...there is no other information available or release of the information is exempt from OPRA pursuant to N.J.S.A. 47:1A-1.1 et seq."

¹ No legal representation listed on record.

² Represented by John A. Napolitano, Esq., of Cleary, Giacobbe, Alfieri, Jacobs, LLC (Oakland, NJ).

³ There were other records requested that are not relevant to this complaint. The records the Complainant alleges are relevant to the complaint do not mirror the items requested.

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 November 17, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he requested records from two (2) agencies: the Morris County Prosecutor’s Office (“MCPO”) and the Criminal Division of the Superior Court. The Complainant states that he specifically requested affidavits, search warrants, arrest warrants, commitment orders, indictments, accusations, *in limine* orders, plea forms, waivers, Judgments of Conviction, and any other documents not otherwise specified for the following criminal matters: MRS 09-000932-001, filed April 14, 2009; FJ 14-001489-07, filed April 6, 2007; and MRS 10-04-00376-Z, filed March 25, 2010.

The Complainant states that the Criminal Division disclosed to him an Accusation and Judgment of Conviction under MRS 10-04-00376-Z, and the MCPO disclosed to him a Judgment of Conviction under MRS 10-04-00376-Z and a Judgment of Conviction and complaints under MRS 09-000932-001. The Complainant contends that other information was stated to be exempt under OPRA. The Complainant asserts that the following records were unlawfully denied: (1) search warrants and affidavits under MRS-09-00932-001, filed on April 14, 2009, and (2) search warrants and affidavits under FJ-14-001489-07, filed on April 06, 2007.

The Complainant attached to his complaint two (2) OPRA requests, both dated September 9, 2014. The two requests seek similar records under indictment number 10-04-00376-Z; neither request is addressed to a particular agency.

Statement of Information:

On December 31, 2014, the Custodian filed a Statement of Information (“SOF”). The Custodian certifies that she received the Complainant’s OPRA request, dated September 9, 2014, on September 12, 2014. The request sought the following records:

1. Any and all discoverable materials used in the prosecution of State v. Saccento, Indictment No. 10-04-00376-Z.
2. Any and all discoverable materials used in the prosecution of State v. Saccento, year of filing 2007, in which counsel for the defense was Michael F. Kelly of Wayne, New Jersey.
3. Any and all discoverable materials used in the prosecution of State v. Saccento, year of filing 2008, in which counsel for the defense was Ana M. Tent, ADPD of Morristown, New Jersey.
4. Any and all discoverable materials used in the prosecutions of Jarett Saccento, which is still being retained by this office and that has not been specifically specified.

The Custodian certifies that she conducted a search on *Promis Gavel*, the statewide case tracking system, which showed that Indictment No. 10-04-00376 was disposed on April 28, 2010, by guilty plea. The Custodian said she learned that the case had been transferred to Morris County from Passaic County, and for that reason, the only record for Indictment No. 10-04-00376 in possession of the Morris County Prosecutor’s Office was the “Change of Judgment of

Conviction & Order for Commitment VOP.” The Custodian certifies that she disclosed this record to the Complainant in her written response dated September 23, 2014.

The Custodian certifies that *Promis Gavel* showed three (3) other cases in which the Complainant was a defendant. The Custodian certifies that Case No. 08000135, initiated on January 14, 2008, and Case No. 11000854, initiated on April 15, 2011, were each remanded to the municipality; therefore, the MCPO has no records related to those cases in its possession. The Custodian also certifies that *Promis Gavel* revealed another State v. Saccento matter listed as Case No. 09000932, initiated on April 14, 2009. The Custodian certifies that the MCPO has file documents pertaining to this case, and although the Complainant never requested any records for this matter, as a courtesy she disclosed to him a copy of the Judgment of Conviction, Complaint-Warrant dated April 14, 2009, Complaint-Summons dated April 14, 2009, and Complaint-Summons dated April 15, 2009. The Custodian stated that she disclosed these records in the September 23, 2014, response.

Custodian’s Counsel argued that the Complainant’s request was an overly broad, blanket request for documents. Counsel cites Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), and MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), among other legal authority, in support of his argument. Counsel states that, although the Custodian had no legal obligation to respond to the Complainant’s request, she took the liberty of providing documents to the Complainant to ensure that the MCPO complied with OPRA’s purpose of maximizing the public’s right of access. Counsel further states that the Custodian went above and beyond OPRA’s requirements by providing the Complainant with records that were not actually sought but still related to the nature of his request.

Additional Submissions:

At the GRC’s request, the Custodian’s Counsel forwarded a supplemental certification from the Custodian, dated May 27, 2015. The Custodian certifies that the only OPRA request submitted to the MCPO was the request dated September 9, 2014, which was responded to on September 23, 2014. The Custodian attached a copy of said OPRA request to her certification as Exhibit A.⁵

Analysis

Sufficiency of Response

In Morris v. Trenton Police Dep’t, GRC Complaint No. 2007-160 (May 2008), the complainant requested several records. The custodian, without further elaboration, stated that access to the requested records was denied. The Council, in finding that the custodian violated OPRA, stated “...the Custodian’s failure to supply the requester with a detailed lawful basis for denial violates N.J.S.A. 47:1A-5(g).” Subsequently, in Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008), the Council, upon finding that the custodian’s written response was insufficient, noted that, “...N.J.S.A. 47:1A-5(g) provides that

⁵ Exhibit A is the same request that the Custodian set out in full in Paragraph 2 of her SOI certification and attached thereto as Item 6.

if a custodian is ‘unable to comply with a request for access, then the custodian shall indicate the specific basis’ for noncompliance.”

Here, the Custodian duplicated a description of the requested records on the response, disclosed some records she believed were related to the nature of his request, and then stated “...there is no other information available or release of the information is exempt from OPRA pursuant to N.J.S.A. 47:1A-1.1 et seq.” In denying the balance of the request, the Custodian’s response was not specific, because by using the conjunction “or” she presented an alternative reason for denial. Moreover, when citing to N.J.S.A. 47:1A-1.1, the Custodian failed to state the specific reason for the denial.

Therefore, the Custodian’s written response is insufficient because the Custodian failed to provide a specific lawful basis for denying the requested records. N.J.S.A. 47:1A-5(g). *See also Morris*, GRC 2007-160 and *Rader*, GRC 2007-239.

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 also provides that “[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may...file a complaint with the Government Records Council...” Id. “The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis.” N.J.S.A. 47:1A-7(e).

Here, the Complainant stated in the Denial of Access Complaint that he was denied two request items: (1) search warrants and affidavits under MRS-09-00932-001, filed on April 14, 2009, and (2) search warrants and affidavits under FJ-14-001489-07, filed on April 06, 2007.

The Custodian certified that she only received one (1) request from the Complainant, which was dated September 9, 2014.⁶ The evidence of record reveals that nowhere in the request that the Custodian certified she received did the Complainant seek “search warrants and affidavits” under MRS-09-00932-001 or FJ-14-001489-07.

In Burns v. NJ Dep’t of State, Div. of Elections, GRC Complaint No. 2013-64 (September 2013), the Council found that the complainant contested a denial of access to records she did not originally request. The Council concluded that the complaint was therefore without merit because no denial of access had occurred.

Here, as in Burns, GRC 2013-64, the Complainant asserts a denial of access to records that he did not seek in his request dated September 9, 2014, which was the request that the

⁶ The request is set forth in its entirety in the Statement of Information section on page 2.

Custodian certified she had received. The GRC is therefore satisfied that the complaint is without merit because no denial of access occurred.

Accordingly, because the Custodian did not deny access to the records described in the Denial of Access Complaint (a description that differs from the original OPRA request), this complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e). *See also Burns v. NJ Dep't of State, Div. of Elections*, GRC Complaint No. 2013-64 (September 2013).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's written response is insufficient because the Custodian failed to provide a specific lawful basis for denying the requested records. N.J.S.A. 47:1A-5(g). *See also Morris v. Trenton Police Dep't*, GRC Complaint No. 2007-160 (May 2008), and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).

2. Because the Custodian did not deny access to the records described in the Denial of Access Complaint (a description that differs from the original OPRA request), this complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e). *See also Burns v. NJ Dep't of State, Div. of Elections*, GRC Complaint No. 2013-64 (September 2013).

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015