



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**

**September 29, 2015 Government Records Council Meeting**

Mark L. Tompkins  
Complainant

Complaint No. 2014-405

v.

Newark Police Department (Essex)  
Custodian of Record

At the September 29, 2015 public meeting, the Government Records Council (“Council”) considered the September 22, 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 the Custodian has borne his burden of proof that he lawfully denied access to the requested documents, 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 29<sup>th</sup> Day of September, 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 5, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 29, 2015 Council Meeting**

**Mark L. Tompkins<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-405**

**v.**

**Newark Police Department (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

1. Copy of certified copies of “file” pertaining to Agency Case #2002-24352, including all complaints, warrants, summonses, reports, bench warrants, orders, notices, supporting paperwork, disposals.
2. Copy of (A.C.S./A.T.S.) disposition/notes/warrant/data pertaining to Agency Case #2002-24352.

**Custodian of Record:** Robert P. Marasco  
**Request Received by Custodian:** August 7, 2013  
**Response Made by Custodian:** September 9, 2013  
**GRC Complaint Received:** December 1, 2014

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

**Request and Response:**

On July 25, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Custodian wrote to the Complainant on August 8, 2013, the next day following receipt of the request, to confirm receipt of the request and note that his office had commenced a search of all relevant records. The Custodian additionally stated that the Complainant should “anticipate a response” on or before August 16, 2013. On September 9, 2013, the Custodian responded in writing, denying the request due to no responsive records located.<sup>4</sup>

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

<sup>2</sup> Represented by Vivian Sanks King, Esq.

<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> Based on the substance of the Denial of Access Complaint, the GRC will not consider the timeliness of the Custodian’s response.

### Denial of Access Complaint:

On November 21, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant requested that the GRC consider that his “witness,” an employee of Argus Investigation Services, Inc., was denied access. The Complainant asserted no other legal arguments.

### Statement of Information:

On December 18, 2014, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA request on August 7, 2013. The Custodian certified that he responded in writing on August 8, 2013, acknowledging receipt of the request and advising him of an anticipated release date on or before August 16, 2013. The Custodian ultimately denied the request on September 9, 2013. The Custodian certified that the request was sent to the Police Department and that no records were located. The Custodian noted that the records requested are court-related documents, and the City of Newark “is not the Custodian of any Court records.” The Custodian made no further legal argument as to the denial.

## 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 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, no copy of the document sought was found. Additionally, the Complainant failed to provide any competent, credible evidence to rebut the Custodian’s certification that they did not house the requested document.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested documents, 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 the Custodian has borne his burden of proof that he lawfully denied access to the requested documents, 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

September 22, 2015