



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

March 28, 2017 Government Records Council Meeting

Michael P. Reilly
Complainant

Complaint No. 2015-241

v.

Monmouth Beach Police Department (Monmouth)
Custodian of Record

At the March 28, 2017 public meeting, the Government Records Council (“Council”) considered the March 21, 2017 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. The Custodian unlawfully denied access to the Complainant’s OPRA request based on OPRA’s “ongoing investigation” exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3. The Custodian failed to provide the Complainant with criminal investigation information as required and set forth under N.J.S.A. 47:1A-3(b). See North Jersey Media Group, Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70, 112-113 (App. Div. 2015) appeal docketed, A-35-15 North Jersey Media Group, Inc. v. Twp. of Lyndhurst (076184). However, the Council declines to order disclosure because the evidence in the record demonstrates that the Custodian provided said information on August 14, 2015, via a record attached to his SOI.
2. The Custodian violated N.J.S.A. 47:1A-3(b) by failing to provide information subject to disclosure following an arrest. However, the Custodian provided said information via a record attached to his SOI on August 14, 2015. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 28th Day of March, 2017

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: March 31, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 28, 2017 Council Meeting**

**Michael P. Reilly¹
Complainant**

GRC Complaint No. 2015-241

v.

**Monmouth Beach Police Department (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Copy of “arrest report.”

Custodian of Record: Thomas C. Walsh
Request Received by Custodian: June 24, 2015
Response Made by Custodian: July 7, 2015
GRC Complaint Received: July 20, 2015

Background³

Request and Response:

On June 24, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 7, 2015, the Custodian responded in writing, denying access to the records, as they pertain to an ongoing investigation pursuant to N.J.S.A. 47:1A-3.

Denial of Access Complaint:

On July 20, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not put forth any accompanying arguments in his claim of an unlawful denial of access. However, the Complainant added that the “arrest report” he sought involved his own arrest in June 23, 2015.

Statement of Information:

On August 14, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 24, 2015. The

¹ No legal representation listed on record.

² Represented by Dennis A. Collins, Esq. (Manasquan, NJ).

³ 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.

Custodian then certified that he responded on July 7, 2015, asserting that the OPRA request pertained to an ongoing investigation and was therefore denied. N.J.S.A. 47:1A-3.

Additionally, the Custodian asserted that the Monmouth Police Department (MPD) does not possess any record entitled “arrest record,” and indicated such within the Item No. 9 document index. The Custodian added that the only record that may possess information similar to an “arrest report” is entitled “Sentryx Booking Information” and included with the SOI a copy of one such record that pertains to the Complainant’s arrest on June 23, 2015.

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 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 be accompanied with sufficient identifying information. *See* Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012). 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.

Recently, the Appellate Division discussed the obligations of the responding agency in providing information pertaining to an arrest as described under N.J.S.A. 47:1A-3(b). North Jersey Media Group, Inc. (“NJMG”) v. Twp. of Lyndhurst, 441 N.J. Super. 70, (App. Div. 2015) appeal docketed, A-35-15 North Jersey Media Group, Inc. v. Twp. of Lyndhurst (076184). The court rejected the argument that section 3(b) entitles the requestor to a specific record if it contains the requested information. Id. at 112. The court held that:

[T]he word "information," as used in the statute, is not synonymous with tangible records, such as written documents, notes, or recordings that contain the specified information. The required "information" may be conveyed in a newly drafted press release. Conceivably, the information could be provided in a public oral announcement.

[Id. at 112.]

Therefore, notwithstanding whether the criminal investigatory record contains §3(b) information, a requestor is not entitled access to the record itself. Id. at 113. Instead, the requestor is only entitled to the §3(b) information, unless the Custodian can show that disclosure of such information would “jeopardize the safety of any person or jeopardize any investigation in progress[.]” N.J.S.A. 47:1A-3(b).

Here, the Complainant sought an “arrest report.” Similar to Dawara, the Complainant’s request for an “arrest report” reasonably identifies the type of record sought. GRC No. 2013-267. However, the Complainant’s request failed to identify a specific date or range of dates, or the subject matter of the arrest report. Thus, absent additional identifying information, the Complainant’s request is overly broad and invalid. *See* Burke, 429 N.J. Super. at 176. Notwithstanding the request’s *prima facie* invalidity, the evidence in the record demonstrates that the Custodian was able to determine the specific arrest report sought by the Complainant.

The Custodian denied access to records pertaining to the Complainant’s June 23, 2015 arrest, stating that they are part of an ongoing investigation. However, the Custodian is still obligated to provide §3(b) information that is required to be disclosed after an arrest has been made, unless he can show that release of such information would “jeopardize the safety of any person or jeopardize any investigation in progress[.]” NJMG, 441 N.J. Super. at 112-113. The Custodian certified that he attached to his SOI a record containing information that would normally be within an arrest record.

Therefore, the Custodian unlawfully denied access to the Complainant’s OPRA request based on OPRA’s “ongoing investigation” exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3. The Custodian failed to provide the Complainant with criminal investigation information as required and set forth under N.J.S.A. 47:1A-3(b). *See* NJMG, 441 N.J. Super. at 112-113. However, the Council declines to order disclosure because the evidence in the record demonstrates that the Custodian provided said information on August 14, 2015, via a record attached to his SOI.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The

following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the instant matter, the Custodian violated N.J.S.A. 47:1A-3(b) by failing to provide information subject to disclosure following an arrest. However, the Custodian provided said information via a record attached to his SOI on August 14, 2015. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the Complainant’s OPRA request based on OPRA’s “ongoing investigation” exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3. The Custodian failed to provide the Complainant with criminal investigation information as required and set forth under N.J.S.A. 47:1A-3(b). *See* North Jersey Media Group, Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70, 112-113 (App. Div. 2015) appeal docketed, A-35-15 North Jersey Media Group, Inc. v. Twp. of Lyndhurst (076184). However, the Council declines to order disclosure because the evidence in the record demonstrates that the Custodian provided said information on August 14, 2015, via a record attached to his SOI.
2. The Custodian violated N.J.S.A. 47:1A-3(b) by failing to provide information subject to disclosure following an arrest. However, the Custodian provided said information via a record attached to his SOI on August 14, 2015. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

March 21, 2017