



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2019 Government Records Council Meeting

Matthew Drange
Complainant

Complaint No. 2015-265

v.

Camden County Office of Archives
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 Supplemental 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 complied with the Council’s December 18, 2018 Interim Order because she responded within the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Council Staff.
2. The Custodian unlawfully redacted the responsive records, the Custodian provided the Complainant with the redacted records as amended in accordance with the Council’s December 18, 2018 Interim Order. 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 31st Day of January, 2019

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: February 5, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
January 31, 2019 Council Meeting**

**Matthew Drange¹
Complainant**

GRC Complaint No. 2015-265

v.

**Camden County Office of Archives
and Records Management²
Custodial Agency**

Records Relevant to Complaint: “Electronic records of all incidents of possible gunshots by ShotSpotter Flex sensors used to generate summary reports for the city from January 1, 2013 to the date this request is processed, including:

- Date and time of the incident (with detail to the minute if available – for example, 1/1/13 4:32pm)
- Location (latitude and longitude)PI
- Address
- Incident type (multiple gunshots, single gunshot, or possible gunshot(s))
- Beat (for example, “25X”)

Please provide the data in a machine-readable format (for example, Excel [XLS, XLSX], comma-separated value [CSV], or ESRI ArcGIS files). In addition, I’d like copies of the most recent contract between the city and ShotSpotter and any and all supporting materials that document the city’s efforts to verify the accuracy of the data provided by ShotSpotter.”

Custodian of Record: Maria Efstratiades
Requests Received by Custodian: May 8, 2015
Response Made by Custodian: May 11, 2015
GRC Complaint Received: August 18, 2015

Background

December 18, 2018 Council Meeting:

At its December 18, 2018, public meeting, the Council considered the December 11, 2018 *In Camera* Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said The Council, therefore, found that:

¹ No representation listed on record.

² Represented by Howard Goldberg, Esq. (Camden, NJ).

1. The Custodian complied with the Council's June 26, 2018 Interim Order because she responded within the prescribed extended time frame providing records for *in camera* review and simultaneously provided certified confirmation of compliance to the Council Staff.
2. The Custodian unlawfully denied access to the ID number and rounds fired for the ShotSpotter incident data requested by the Complainant. N.J.S.A. 47:1A-1.1. Thus, the Custodian shall disclose these portions of the data. However, the Custodian lawfully redacted the time, address, and precise coordinates for each incident, as disclosure would create a risk to witnesses, victims, and the devices themselves. N.J.S.A. 47:1A-1.1, N.J.A.C. 13:1E-3.2(a)3.
3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in conclusion No. 2 above within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Council Staff.⁵**
4. 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 December 19, 2018, the Council distributed its Interim Order to all parties. On December 24, 2018, the Custodian responded to the Council's Interim Order, certifying that the amended records were provided to the Complainant that day, in accordance with the Interim Order. The Complainant included a copy of the redacted records along with her certification.

Analysis

Compliance

At its December 18, 2018 meeting, the Council ordered the Custodian to provide the Complainant with the responsive records as amended, and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Council Staff. On December 19, 2018, the Council distributed its Interim Order to all parties, providing the Custodian five (5)

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

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 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.

business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on December 27, 2018, accounting for the Christmas holiday.

On December 24, 2018, the third (3rd) business day after receipt of the Council's Interim Order, the Custodian responded in writing, stating that the redacted records were provided to the Complainant as amended. The Custodian also provided a certified confirmation of compliance.

Therefore, the Custodian complied with the Council's December 18, 2018 Interim Order because she responded within the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Council Staff.

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)).

Although the Custodian unlawfully redacted the responsive records, the Custodian provided the Complainant with the redacted records as amended in accordance with the Council's December 18, 2018 Interim Order. 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 Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council's December 18, 2018 Interim Order because she responded within the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Council Staff.
2. The Custodian unlawfully redacted the responsive records, the Custodian provided the Complainant with the redacted records as amended in accordance with the Council's December 18, 2018 Interim Order. 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

January 22, 2019



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

December 18, 2018 Government Records Council Meeting

Matthew Drange
Complainant

Complaint No. 2015-265

v.

Camden County Office of Archives
And Records Management
Custodian of Record

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Council Staff 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 complied with the Council's June 26, 2018 Interim Order because she responded within the prescribed extended time frame providing records for *in camera* review and simultaneously provided certified confirmation of compliance to the Council Staff.
2. The Custodian unlawfully denied access to the ID number and rounds fired for the ShotSpotter incident data requested by the Complainant. N.J.S.A. 47:1A-1.1. Thus, the Custodian shall disclose these portions of the data. However, the Custodian lawfully redacted the time, address, and precise coordinates for each incident, as disclosure would create a risk to witnesses, victims, and the devices themselves. N.J.S.A. 47:1A-1.1, N.J.A.C. 13:1E-3.2(a)3.
3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in conclusion No. 2 above within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Council Staff.³**

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "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."

³ 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.



4. 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.

Interim Order Rendered by the
Government Records Council
On The 18th Day of December, 2018

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: December 19, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting**

**Matthew Drange¹
Complainant**

GRC Complaint No. 2015-265

v.

**Camden County Office of Archives
and Records Management²
Custodial Agency**

Records Relevant to Complaint: “Electronic records of all incidents of possible gunshots by ShotSpotter Flex sensors used to generate summary reports for the city from January 1, 2013 to the date this request is processed, including:

- Date and time of the incident (with detail to the minute if available – for example, 1/1/13 4:32pm)
- Location (latitude and longitude)PI
- Address
- Incident type (multiple gunshots, single gunshot, or possible gunshot(s))
- Beat (for example, “25X”)

Please provide the data in a machine-readable format (for example, Excel [XLS, XLSX], comma-separated value [CSV], or ESRI ArcGIS files). In addition, I’d like copies of the most recent contract between the city and ShotSpotter and any and all supporting materials that document the city’s efforts to verify the accuracy of the data provided by ShotSpotter.”

Custodian of Record: Maria Efstratiades
Requests Received by Custodian: May 8, 2015
Response Made by Custodian: May 11, 2015
GRC Complaint Received: August 18, 2015

Records Submitted for *In Camera* Examination: Unredacted copies of the ShotSpotter incident data from January 1, 2013 to the date of the request.

Background

June 26, 2018 Council Meeting:

At its June 26, 2018 public meeting, the Council considered the June 19, 2018 Findings

¹ No representation listed on record.

² Represented by Howard Goldberg, Esq. (Camden, NJ).

and Recommendations of the Council Staff 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's May 8, 2015 response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. Notwithstanding the Custodian's insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking accuracy verification of ShotSpotter's incident data. N.J.S.A. 47:1A-6. The certification from the Custodian and the accompanying evidence in the record reflects that no responsive records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The GRC must conduct an *in camera* review of the redacted records in order to validate the Custodian's assertions that such records are, in fact, exempt from disclosure based on OPRA's exemptions for security and surveillance measures, and/or proprietary information or trade secrets, pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver³ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see Conclusion No. 3 above), nine (9) copies of the redacted records, a document or redaction index⁴, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁵ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. 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 June 28, 2018, the Council distributed its Interim Order to all parties. On June 29, 2018, the Custodian requested and was granted an extension of time to respond to the Interim Order to until July 20, 2018. On July 19, 2018, the Custodian responded to the Council's Interim Order, providing nine (9) redacted and unredacted copies of the ShotSpotter incident data, along with a certification from the Custodian.

³ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

⁴ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁵ "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."

Analysis

Compliance

At its June 26, 2018 meeting, the Council ordered the Custodian to provide nine (9) copies of the redacted and unredacted ShotSpotter incident data for *in camera* review within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance to the Council Staff. On June 28, 2018, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on Friday, July 6, 2018.

On June 29, 2018, the first (1st) business day after receipt of the Council's Order, the Custodian sought an extension of time to until July 20, 2018. On July 19, 2018, the Custodian responded by providing nine (9) copies of the redacted and unredacted records as well as a signed certification.

Therefore, the Custodian complied with the Council's June 26, 2018 Interim Order because she responded within the prescribed extended time frame providing records for *in camera* review and simultaneously provided certified confirmation of compliance to the Council Staff.

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. N.J.S.A. 47:1A-6.

The GRC conducted an *in camera* examination on the submitted record. In summary, the record listed alleged gun shots detected from audio sensors installed by ShotSpotter. The record assigns each incident with an ID number, and identifies whether the incident involved one or more gunshots, the date and time of the incident, a nearby address, the approximate number of rounds fired, and latitude and longitude coordinates. In accordance with the language contained in the contract with ShotSpotter regarding public access requests, the Custodian redacted the ID number, time, address, rounds fired, and latitude and longitude coordinates beyond three (3) decimal places for each incident.

Contractual Agreement

Under N.J.S.A. 47:1A-9, OPRA identifies the regulations, laws, and rules that protect government records from access would not be overruled by OPRA, as well as confidential privileges recognized by case law and other branches of government. These protections come from government entities. The Custodian asserted that its contractual agreement with ShotSpotter prevents them from disclosing the redacted information. However, confidentiality agreements with

vendors do not fall under these protections. Therefore, the Custodian cannot solely rely upon the language contained in a vendor contract to deny access to government records. However, such records may be denied or redacted on other grounds.

Trade Secrets/Proprietary Information

The Custodian also asserted that the records were redacted to protect information which ShotSpotter considered trade secrets or proprietary information. See N.J.S.A. 47:1A-1.1(6). Information is proprietary when it is not intended for wide dissemination, the expectation of confidentiality was manifest, and the parties' agreement delineates the specific terms and specific persons who are permitted to review this information. Newark Morning Star Ledger Co. v. New Jersey Sports & Exposition Auth., 423 N.J. Super. 140, 168 (App. Div. 2011). Additionally, trade secrets consist of information used in one's business which provides an advantage over competitors who do not know or use it. Id.

Within its contract with Camden, ShotSpotter outlined its guidance to customers when handling public records requests for data obtained from its devices. The contract stated that by default any request should be denied in full, but in the alternative some data may be released subject to redactions. The Custodian elected to do the latter, and provided records with redactions made in accordance with ShotSpotter's specifications.

Nevertheless, neither the Custodian nor ShotSpotter provide an adequate explanation on how the incident data qualifies as "proprietary" or "trade secrets" under OPRA. Rather, the Custodian merely references its agreement with ShotSpotter which states in part that the data obtained via the software and devices remain the exclusive property of ShotSpotter. As mentioned above, government records cannot be withheld from disclosure solely based upon the contractual terms of a third-party vendor.

Security Measures and Techniques

Lastly, the Custodian contended that release of the records without redactions would jeopardize the safety of persons, property, electronic data or software. N.J.S.A. 47:1A-1.1(10). In Burton v. N.J. Dep't of Law & Pub. Safety, Div. of State Police, GRC Complaint No. 2010-330 (May 2011), the Council held that:

The Custodian has lawfully denied access to the requested payroll records because said records are exempt from public access under N.J.S.A. 47:1A-9(a), which upholds exemptions contained in an Executive Order of the Governor or any regulation promulgated pursuant to an Executive Order of the Governor. Executive Order No. 47 (Christie 2010) permits rules proposed by the N.J. Department of Law & Public Safety to remain in full effect. N.J.A.C. 13:1E-3-2(a)3 exempts records which may reveal an agency's surveillance, security, or investigative techniques or procedures, and N.J.A.C. 13:1E-3.2(a)7 exempts "[t]he duty assignment of an individual law enforcement officer or any personally identifiable information that may reveal or lead to information that may reveal such duty assignment, including, but not limited to, overtime data pertaining to an individual law enforcement

officer.” Despite payroll records being public records under N.J.S.A. 47:1A-10, the release of said records in this instance leaves the Executive Protection Bureau vulnerable to how heavy of a security level it places on protecting various dignitaries and are therefore exempt under the regulations cited above.

[Id. at 12-13.]

In Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011), the Council held that, “[b]ecause request Items No. 3 and 10 sought police daily duty logs, which records necessarily include details regarding surveillance techniques and staffing levels which, if disclosed, could pose a risk to the safety of police personnel as well as civilians employed by the Plainfield Police Department, such records are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1.”

In the instant matter, the Custodian quoted advice received from Camden County Police Department’s (“CCPD”) representative Michael Daniels (“Mr. Daniels”). Mr. Daniels asserted that CCPD has a compelling interest in redacting certain portions of the incident data, as many of these incidents can become part of open investigations involving witnesses and victims that could be at risk of harm if precise location data were made public. Mr. Daniels contended that this data could be used to locate the exact unit of an apartment complex where a shooting occurred, and deduce the identity of the victim and/or witnesses involved. Furthermore, Mr. Daniels asserted that providing the exact coordinates could reveal the location of the ShotSpotter devices, subjecting them to tampering or theft by criminals.

The GRC is persuaded by the arguments made from Mr. Daniels. ShotSpotter devices are used to notify police of potential gunfire occurring in the city, allowing officers to respond more quickly than waiting to be notified by a witness or victim. Providing the address and exact coordinates for each incident could invariably lead to criminals being able to locate where the devices are installed, thus risking damage or theft. Additionally, the location data could aid criminals in identifying victims and potential witnesses should the recorded incident lead to a criminal investigation. Therefore, providing the data unredacted poses a risk to surveillance measures and techniques utilized by law enforcement. See N.J.S.A. 47:1A-1.1., and N.J.A.C. 13:1E-3.2(a)3. However, the GRC is not persuaded that revealing the ID number and rounds fired for the incidents would contribute to the risk posited by Mr. Daniels, since the alleged number of rounds fired is not identifying information.

Therefore, the Custodian unlawfully denied access to the ID number and rounds fired for the ShotSpotter incident data requested by the Complainant. N.J.S.A. 47:1A-1.1. Thus, the Custodian shall disclose these portions of the data. However, the Custodian lawfully redacted the time, address, and precise coordinates for each incident, as disclosure would create a risk to witnesses, victims, and the devices themselves. N.J.S.A. 47:1A-1.1., N.J.A.C. 13:1E-3.2(a)3.

Knowing & Willful

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.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council's June 26, 2018 Interim Order because she responded within the prescribed extended time frame providing records for *in camera* review and simultaneously provided certified confirmation of compliance to the Council Staff.
2. The Custodian unlawfully denied access to the ID number and rounds fired for the ShotSpotter incident data requested by the Complainant. N.J.S.A. 47:1A-1.1. Thus, the Custodian shall disclose these portions of the data. However, the Custodian lawfully redacted the time, address, and precise coordinates for each incident, as disclosure would create a risk to witnesses, victims, and the devices themselves. N.J.S.A. 47:1A-1.1., N.J.A.C. 13:1E-3.2(a)3.
3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in conclusion No. 2 above within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Council Staff.⁸**
4. 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

December 11, 2018

⁶ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁷ "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."

⁸ 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.



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

June 26, 2018 Government Records Council Meeting

Matthew Drange
Complainant

Complaint No. 2015-265

v.

Camden County Office of Archives
and Records Management
Custodian of Record

At the June 26, 2018 public meeting, the Government Records Council (“Council”) considered the June 19, 2018 Findings and Recommendations of the Council Staff 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’s May 8, 2015 response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. Notwithstanding the Custodian’s insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking accuracy verification of ShotSpotter’s incident data. N.J.S.A. 47:1A-6. The certification from the Custodian and the accompanying evidence in the record reflects that no responsive records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The GRC must conduct an *in camera* review of the redacted records in order to validate the Custodian’s assertions that such records are, in fact, exempt from disclosure based on OPRA’s exemptions for security and surveillance measures, and/or proprietary information or trade secrets, pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see Conclusion No. 2 above), nine (9) copies of the redacted records, a document or redaction index², as well as a legal**

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.



certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,³ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

5. 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.

Interim Order Rendered by the
Government Records Council
On The 26th Day of June, 2018

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: June 28, 2018

³ "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."

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
June 26, 2018 Council Meeting**

**Matthew Drange¹
Complainant**

GRC Complaint No. 2015-265

v.

**Camden County Office of Archives
and Records Management²
Custodial Agency**

Records Relevant to Complaint: “Electronic records of all incidents of possible gunshots by ShotSpotter Flex sensors used to generate summary reports for the city from January 1, 2013 to the date this request is processed, including:

- Date and time of the incident (with detail to the minute if available – for example, 1/1/13 4:32pm)
- Location (latitude and longitude)PI
- Address
- Incident type (multiple gunshots, single gunshot, or possible gunshot(s))
- Beat (for example, “25X”)

Please provide the data in a machine-readable format (for example, Excel [XLS, XLSX], comma-separated value [CSV], or ESRI ArcGIS files). In addition, I’d like copies of the most recent contract between the city and ShotSpotter and any and all supporting materials that document the city’s efforts to verify the accuracy of the data provided by ShotSpotter.”

Custodian of Record: Maria Efstratiades
Requests Received by Custodian: May 8, 2015
Response Made by Custodian: May 11, 2015
GRC Complaint Received: August 18, 2015

Background³

Request and Response:

On May 8, 2015, the Complainant submitted an Open Public Records Act (“OPRA”)

¹ No representation listed on record.

² Represented by Howard Goldberg, Esq. (Camden, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

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request to the Custodian seeking the above-mentioned records. On May 11, 2015, the Custodian responded in writing, providing the most recent contract between the City of Camden (“City”) and ShotSpotter. However, the Custodian denied access to the incident data on the grounds that they contain “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software.” N.J.S.A. 47:1A-1.1. The Custodian also denied access to the data on the basis that the County of Camden (“County”) is prohibited from releasing the records pursuant to the service and lease agreement with ShotSpotter.

On June 26, 2015, the Complainant e-mailed the Custodian claiming that he had not received a response to his OPRA request. On June 29, 2015, the Custodian replied to the Complainant, stating that she responded to his OPRA request on May 11, 2015, and included said response with the original attachments.

On August 6, 2015, the Complainant e-mailed the Custodian again, claiming that he had not received a response to his OPRA request. On August 7, 2015, the Custodian responded to the Complainant, forwarding her previous responses to the Complainant with the attached records.

On August 13, 2015, the Complainant replied to the Custodian, acknowledging receipt of the response. The Complainant also stated that he needed a more detailed explanation for the denial of access to some of the records he requested. He also asserted that the contract he received was the original contract, and not the most recent contract as requested. Lastly, the Complainant asked the Custodian whether Camden⁴ conducted any independent analysis to verify the accuracy of the data. The Complainant stated that the Custodian did not address that portion of his request.

On August 14, 2015, the Custodian responded to the Complainant. The Custodian asserted that she interpreted his request for records regarding the accuracy of the ShotSpotter data as seeking records from the City rather than the County. She added that because the County did not negotiate the contract between the City and ShotSpotter, no responsive records exist, and the Complainant should direct the request to the City. The Custodian also stated that she provided the Complainant with the most recent contract between the City and ShotSpotter, but also included in the reply a copy of a Memorandum of Understanding (“MOU”) between the City and the County. The Custodian stated that the MOU, dated March 14, 2013, pertained to the transfer of the contract from the City to the County. The Custodian asserted that she did not include the MOU in her May 11, 2015 response because the Complainant did not seek a contract between the City and the County.

Denial of Access Complaint:

On August 18, 2015 the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s May 11, 2015 was insufficient, claiming that the Custodian only referenced surveillance technology generally, and failed to cite a legal exemption justifying the denial. Additionally, the Complainant argued that that the Custodian could not rely solely upon the contractual agreement with ShotSpotter to deny access to the incident data.

⁴ It is unclear whether the Complainant was referring to Camden County or the City of Camden.
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Statement of Information:

On September 16, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she provided three (3) records in response to the Complainant’s OPRA request.

The Custodian certified that she obtained the contract between the City and ShotSpotter via the MOU between the City and County. The Custodian affirmed that the City entered into an agreement with ShotSpotter prior to the dissolution of the Camden City Police Department. The Custodian noted that the Camden County Police Department took over on May 1, 2013. The Custodian certified that she obtained the purchase order from the City along with the contract they forwarded to the Custodian. As to the MOU, the Custodian sent it to the Complainant on August 14, 2015, but noted that it was not specifically requested by the Complainant.

As to the records documenting “the city’s efforts to verify the accuracy of the data provided by ShotSpotter . . .”, the Custodian certified that she interpreted that portion of the request as the Complainant seeking documents originating from the City of Camden. Thus, the Custodian stated that the County would not have such records and that the Complainant should seek those records directly from the City. Furthermore, the Custodian asserted that this portion of the request is overly broad and would require the Custodian to conduct research to locate responsive records.

Regarding the incident data, the Custodian asserted that County is prohibited from releasing the data pursuant to the agreement between the County and ShotSpotter. Additionally, the Custodian asserted that the data contains information protected from disclosure under OPRA’s exemption for “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of person[s], property, electronic data, or software.” N.J.S.A. 47:1A-1.1.

However, the Custodian asserted that upon review from counsel, the incident data could be released with redactions. The Custodian attached the redacted record under Item 11 of the SOI. The Custodian asserted that the redactions were made pursuant to OPRA protections for proprietary information and trade secrets. See N.J.S.A. 47:1A-1.1. Additionally, the Custodian stated that ShotSpotter would only allow the disclosure of the records in paper format, containing only the type of alert, date, and the latitude and longitude of the incident location. However, the Custodian asserted that the latitude and longitude precision cannot exceed three (3) decimal places.

Analysis

Insufficient Response

OPRA provides that a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).”

Here, the Custodian responded to the Complainant's May 8, 2015 OPRA request on May 11, 2015. While the Custodian addressed the portions of the request seeking the contract and incident data, the Custodian did not address the portion seeking records pertaining to confirming the accuracy of the incident data. It was not until the Complainant brought up the oversight that the Custodian responded. While the Complainant did not itemize his request, it is clear that he sought three (3) distinct records in his request. Thus, in line with Paff, GRC 2007-272, her response was insufficient.

Accordingly, the Custodian's May 8, 2015 response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff, GRC 2007-272.

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.

Records Pertaining to Data Accuracy

In Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

In the instant matter, the Custodian sought records pertaining to the "city's efforts to verify the accuracy of the data provided by ShotSpotter . . ." The Custodian asserted that she interpreted this portion of the request as the Complainant seeking documents from the City, rather than the County. Furthermore, the Custodian certified that because the original agreement to utilize ShotSpotter's services was with the City, the County would not have such records in its possession. Therefore, the Custodian certified that no responsive records exist and that the Complainant should direct this portion of the request to the City.

Accordingly, notwithstanding the Custodian's insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking accuracy verification of ShotSpotter's incident data. N.J.S.A. 47:1A-6. The certification from the Custodian and the accompanying evidence in the record reflects that no responsive records exist. Pusterhofer, GRC 2005-49.

Incident Data

In Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the

complainant appealed a final decision of the Council⁵ that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The Court stated that:

[OPRA] also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.' N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id.] at 355.]

Further, the Court found that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

Here, the Custodian argued that the incident data provided to the Complainant were redacted pursuant to N.J.S.A. 47:1A-1.1, where the information contained security measures and surveillance techniques, as well as proprietary information and trade secrets. Without inspecting the unredacted records, and in light of the Custodian's burden to prove a lawful denial of access, the GRC cannot conduct the "meaningful review of the basis for an agency's decision to withhold government records" contemplated under OPRA. Id. at 354.

Therefore, the GRC must conduct an *in camera* review of the redacted records in order to validate the Custodian's assertions that such records are, in fact, exempt from disclosure based on OPRA's exemptions for security and surveillance measures, and/or proprietary information or trade secrets, pursuant to N.J.S.A. 47:1A-1.1.

⁵ Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).
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Knowing & Willful

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.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's May 8, 2015 response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. Notwithstanding the Custodian's insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking accuracy verification of ShotSpotter's incident data. N.J.S.A. 47:1A-6. The certification from the Custodian and the accompanying evidence in the record reflects that no responsive records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The GRC must conduct an *in camera* review of the redacted records in order to validate the Custodian's assertions that such records are, in fact, exempt from disclosure based on OPRA's exemptions for security and surveillance measures, and/or proprietary information or trade secrets, pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver⁶ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see Conclusion No. 2 above), nine (9) copies of the redacted records, a document or redaction index⁷, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁸ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. 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

June 19, 2018

⁶ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

⁷ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁸ "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."

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