



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

October 27, 2015 Government Records Council Meeting

Richard Stolte
Complainant

Complaint No. 2015-28

v.

Burlington County Prosecutor's Office
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council ("Council") considered the October 20, 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 the Custodian did not unlawfully deny access to any records because the Complainant failed to provide sufficient information in his OPRA request, thereby making it impossible for the Custodian to locate responsive records. N.J.S.A. 47:1A-6; Rogers v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2011-23 (January 2013). Moreover, the Council should decline to address the disclosability of the eight (8) records to which the Custodian denied access because of the lack of specificity in the Complainant's request.

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 27th Day of October, 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 29, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting**

**Richard Stolte¹
Complainant**

GRC Complaint No. 2015-28

v.

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

Records Relevant to Complaint: Records regarding the death of the Complainant's brother as the result of a police incident on October 21, 2000.

Custodian of Record: Glen Filippone
Request Received by Custodian: December 11, 2014
Response Made by Custodian: December 16, 2014
GRC Complaint Received: February 10, 2015

Background³

Request and Response:

On December 11, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. The Complainant noted that his family never received any records, such as police reports, about the incident. On December 16, 2014, the Custodian responded in writing to deny access to the Complainant's OPRA request, advising that the Burlington County Prosecutor's Office ("BCPO") was unable to locate any responsive records.⁴ Further, the Custodian advised the Complainant that he might want to contact the New Jersey State Police ("NJSP"), as they were the initial investigating agency.

Denial of Access Complaint:

On February 10, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that he was seeking accident

¹ No legal representation listed on record.

² Represented by William R. Burns, Esq., of Capehart, Scatchard, P.A. (Trenton, 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.

⁴ The Custodian sent the Complainant a newly completed OPRA request form on which she wrote her response in "Record Request Information" box. The Custodian also checked the "criminal investigatory records" exemption on page 2 of the form.

reports, police reports, audio, video, and any other information that BCPO has regarding the incident with his brother. The Complainant raised concern that the Custodian’s response was a newly completed form that omitted the contents of his original OPRA request. As an aside, the Complainant noted that he submitted an OPRA request to NJSP based partly on the Custodian’s response.

Statement of Information:

On March 10, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on December 11, 2014. The Custodian certified that she found the request invalid because the Complainant failed to identify specific records for an event that occurred over fourteen (14) years earlier and also failed to indicate whether his brother was a defendant, victim, target, or other interested party in a prosecution. The Custodian affirmed that, notwithstanding the foregoing, she performed an exhaustive search for responsive records. The Custodian certified that her search included utilizing the *Promis Gavel* system; however, she could not locate responsive records due to the OPRA request’s lack of specificity. The Custodian certified that she responded in writing on December 16, 2014, denying access and advising that no records existed.

The Custodian affirmed that, although the Complainant did not specifically request the records, he subsequently commented in his Denial of Access Complaint that he sought police reports, crash reports, and audio or visual records. The Custodian certified that the Complainant also included in his Complaint additional identifying information that allowed her to perform a more adequate search. Specifically, the Custodian certified that the Complainant newly included his brother’s date of birth, the law enforcement agencies involved in the incident, and an indictment number (01-03-0354-I), which garnered information on two (2) individuals also involved in the incident. The Custodian noted that the Complainant also attached a newspaper article about the incident. The Custodian thus affirmed that her second search yielded multiple records about these two (2) individuals and the incident on that day. The Custodian certified that a majority of the records were being disclosed as part of the SOI, with the exception of nine (9) records as follows:

Zyburra Adult Presentence Report (9 pages)	<u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 2C:44-6</u> ; NJ Court Rule 3:21-2.
Afonso Adult Presentence Report (16 pages)	<i>See above.</i>
NJSP Investigation Report, Trooper Kuyl (2 pages)	Criminal investigatory record. <u>N.J.S.A. 47:1A-1.1</u> ; <u>Janeczko v. NJ Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004)</u> ; <u>Solloway v. Bergen Cnty. Prosecutor’s Office, GRC Complaint No. 2011-39 (January 2013)</u> ; <u>Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005)</u> .
NJSP Supplementary Investigation Report,	Criminal investigatory record. <i>See above.</i>

Sergeant Serrao (1 page)	
NJSP Supplementary Investigation Report, Detective Medea (6 pages)	Criminal investigatory record. <i>See above.</i>
Military Police Report No. 02045-00-MPC042 (10 pages)	Criminal investigatory record. <i>See above.</i>
Transcript of Statement of Afonso (12 pages)	Criminal investigatory record. <i>See above.</i>
New World Aegis Public Safety System Incident Report	Destroyed per RMS retention schedule.

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 Rogers v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2011-23 (January 2013), the custodian initially denied access to complainant’s OPRA request based, among other things, that no records existed for the indictment number he included in his request. The complainant subsequently filed a Denial of Access Complaint, which provided a different indictment number. Based on the new number, the custodian was able to identify several responsive records, although she still contended that they were exempt from disclosure under OPRA. The Council was thus tasked with determining “whether the Custodian could have unlawfully denied access to the Complainant’s OPRA request in the face of insufficient information . . .” Id. at 6. Based on the evidence of record, the Council determined that the custodian did not unlawfully deny access to any records, reasoning that “[i]t was not until after the filing of [the] complaint that the [c]omplainant provided the [c]ustodian with the correct indictment number that yielded records.” Id. The Council also declined to address the disclosability of records that the custodian located after the Denial of Access Complaint.

The facts of this complaint are similar to those in Rogers, GRC 2011-23. Specifically, the Custodian made a good faith effort to locate responsive records based on the Complainant’s initial OPRA request, but was ultimately unsuccessful. Only after the Complainant filed his Denial of Access Complaint was the Custodian able to glean enough new information (*i.e.*, the brother’s date of birth, law enforcement agencies involved in the incident, and, most important, an indictment number) to locate responsive records. For these reasons, the GRC is satisfied that the Custodian could not have unlawfully denied access to responsive records.

Accordingly, the Custodian did not unlawfully deny access to any records because the Complainant failed to provide sufficient information in his OPRA request, thereby making it impossible for the Custodian to locate responsive records. N.J.S.A. 47:1A-6; Rogers, GRC 2011-23. Moreover, the Council should decline to address the disclosability of the eight (8) records to which the Custodian denied access because of the lack of specificity in the Complainant's request.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to any records because the Complainant failed to provide sufficient information in his OPRA request, thereby making it impossible for the Custodian to locate responsive records. N.J.S.A. 47:1A-6; Rogers v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2011-23 (January 2013). Moreover, the Council should decline to address the disclosability of the eight (8) records to which the Custodian denied access because of the lack of specificity in the Complainant's request.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2015