



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**

**October 27, 2015 Government Records Council Meeting**

Richard Stolte  
Complainant

Complaint No. 2015-34

v.

NJ Department of Law & Public Safety,  
Division on Civil Rights  
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 the Complainant’s clarified OPRA request because he initially responded by stating that no records exist and subsequently certified to same in the Statement of Information. Additionally, there is no evidence in the record to refute the Custodian’s certification. *See 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 27<sup>th</sup> 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 Stolte<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-34**

v.

**NJ Department of Law & Public Safety,  
Division on Civil Rights<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of all “information: (police reports, crash reports, audio/video, Unfounded Investigation Report, Accidental [i]njury/[d]eath records) for” the Complainant’s brother as the result of a police incident on October 21, 2000.

**Custodian of Record:** C. Carlos Bellido  
**Request Received by Custodian:** December 30, 2014  
**Response Made by Custodian:** January 5, 2015  
**GRC Complaint Received:** February 10, 2015

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

**Request and Response:**

On December 30, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 5, 2015, the Custodian responded in writing, denying the Complainant’s OPRA request as an invalid request that seeks information rather than identifiable government records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Spectraserve, Inc. v. Middlesex Cnty. Util. Auth., 416 N.J. Super. 565, 576 (App Div. 2010). The Custodian asked that the Complainant clarify his request to identify specifically the records sought.

On January 5, 2015, the Complainant clarified his OPRA request to seek the following: the police report/accident report for the Complainant’s brother as the result of a police incident on October 21, 2000. On the same day, the Custodian responded in writing, advising the Complainant that the Division on Civil Rights (“DCR”) maintained no responsive records.

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

<sup>2</sup> Represented by Deputy Attorney James Michael.

<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.

Richard Stolte v. NJ Department of Law & Public Safety, Division on Civil Rights, 2015-34 – Findings and Recommendations of the Executive Director

### Denial of Access Complaint:

On February 10, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian twice denied him access to responsive records.

### Statement of Information:

On March 9, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 30, 2014. The Custodian certified that he responded in writing on January 5, 2015. Further, the Custodian certified that he received the Complainant’s clarified OPRA request on January 5, 2015. The Custodian affirmed that he conducted a comprehensive computer search using the Complainant brother’s full name, first and last names separately, and portions of those names, but did not locate any responsive records. The Custodian certified that he immediately responded to the Complainant to advise him of this fact.

The Custodian certified that an extensive search of DCR’s records produced no records responsive to the Complainant’s clarified OPRA request.

### 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 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 timely responded to the Complainant’s clarified OPRA request<sup>4</sup> in writing advising that no records responsive to the clarified OPRA request exist. The Custodian further certified to this fact in the SOI.

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<sup>4</sup> The GRC will not address whether the Custodian properly responded to the Complainant’s December 30, 2014, OPRA request because the Complainant did not submit with the Denial of Access Complaint any legal arguments refuting the Custodian’s initial denial and because he submitted a clarified OPRA request at the behest of the Custodian.

Accordingly, the Custodian did not unlawfully deny access to the Complainant's clarified OPRA request because he initially responded by stating that no records exist and subsequently certified to same in the SOI. Additionally, there is no evidence in the record to refute the Custodian's certification. *See Pusterhofer*, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's clarified OPRA request because he initially responded by stating that no records exist and subsequently certified to same in the Statement of Information. Additionally, there is no evidence in the record to refute the Custodian's certification. *See Pusterhofer v. N.J. Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).

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

Reviewed By: Joseph D. Glover  
Executive Director

October 20, 2015