



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**April 25, 2017 Government Records Council Meeting**

Michael Murphy  
Complainant

Complaint No. 2015-340

v.

NJ Department of Corrections  
Custodian of Record

At the April 25, 2017 public meeting, the Government Records Council (“Council”) considered the April 18, 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. Because the portion of requested item No. 1 seeking “documents” and request item No. 2 seeking “any records” represented a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, that portion of the request is invalid under OPRA. The Custodian had no legal duty to research his records to locate records potentially responsive to either the portion of the Complainant’s request item No. 1 seeking “documents” or the entirety of request item No. 2 seeking “any 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); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
2. The Custodian lawfully denied access to the requested investigation report into employee misconduct because it is exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). Further, because the requested report is exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

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 25<sup>th</sup> Day of April, 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: April 27, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 25, 2017 Council Meeting**

**Michael Murphy<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-340**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via U.S. mail of:

1. Any and all interviews, articles, documents, complaints, court records, *etc.*, generated in regards to “COR S. Grillo,” who was fired from New Jersey Department of Corrections (“DOC”) around April, 2015.
2. Any records generated by “Ms. S. Grillo” at any County facility.

**Custodian of Record:** John Falvey

**Request Received by Custodian:** August 19, 2015

**Response Made by Custodian:** August 28, 2015

**GRC Complaint Received:** November 2, 2015

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

**Request and Response:**

On August 8, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 28, 2015, the Custodian responded in writing, seeking ten (10) additional business days to respond to the Complainant’s OPRA request. On September 11, 2015, the Custodian again responded in writing, denying both OPRA request items. Regarding the portion of item No. 1 seeking “articles and court records,” the Custodian stated that DOC did not maintain any responsive records. Regarding the portion of item No. 1 seeking complaints and interviews, the Custodian denied access to records as follows:

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

<sup>2</sup> No legal representation listed on record.

<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.

- N.J.S.A. 47:1A-1.1: Information generated by or on behalf of public employers or employees in connection with a grievance filed by or against an individual, including any sexual harassment complaint.
- N.J.S.A. 47:1A-10: personnel and pension records.
- N.J.A.C. 10A:22-2.3(a)(2): Special Investigations Division (“SID”) investigatory records and reports, provided that redaction is insufficient to protect the safety of any person or the safe and secure operation of a correctional facility.
- N.J.A.C. 10A:22-2.3(a)(5): records or reports relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of a correctional facility or other designated place of confinement.

Regarding item No. 2, the Custodian stated that it was invalid because it was overly broad. *See MAG Entm’t, LLC v. Div. of ABC*, 375 N.J. Super. 534, 546 (App. Div. 2005).

Denial of Access Complaint:

On November 2, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied access to the responsive records. First, the Complainant argued that N.J.S.A. 47:1A-1.1 does not apply because Ms. Grillo is no longer an employee. Second, the Complainant argued that N.J.S.A. 47:1A-10 did not apply to his OPRA request. However, the Complainant noted that he was entitled to Ms. Grillo’s full name, previous title, position, salary, payroll record, and length of service. The Complainant also argued that the Custodian should disclose statements, interviews and evidence for any appeals, *etc.*, “to ensure a fair hearing and to press charges against said witnesses at a future time.”

The Complainant further attempted to clarify item No. 2 to seek “any document stating the name of any County Correctional Facility [Ms. Grillo] was incarcerated at and the length of time” (*sic*).

Statement of Information:

On December 3, 2015, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA request on August 19, 2015. The Custodian affirmed that he sent a letter to the Complainant on August 28, 2015, seeking ten (10) additional business days to respond. The Custodian certified that his search at that time included locating a four-page SID investigative report into staff misconduct, which was maintained in DOC’s SID Office. The Custodian certified that he responded in writing on September 11, 2015, denying the Complainant access to the responsive record.

Regarding request item No. 1, the Custodian certified that he denied access to the portion of the request seeking articles and court records because no records existed. The Custodian certified that, for the remainder of the request item, he denied access to the investigative report (which resulted in the termination of Ms. Grillo). The Custodian affirmed that the investigative report amounted to a personnel record that detailed SID’s internal investigation process in response to allegations of employee misconduct. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. The

Custodian averred that the report identified witnesses and the evidence that SID reviewed in making its determination to terminate Ms. Grillo. The Custodian also averred that the report detailed how SID conducted a sensitive investigation where inmates needed to be interviewed in a secure prison environment. The Custodian contended that the GRC has routinely held that these types of employee grievances were not subject to disclosure. Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004); Allen v. Cnty. of Warren, GRC Complaint No. 2003-155 (March 2004); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010); Wares v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-330 (June 2015).

The Custodian also argued that disclosure of the report would pose a risk to both staff and inmates. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5). The Custodian asserted that disclosure would reveal how the SID performs investigations within a correctional facility. The Custodian also asserted that disclosure could expose inmates and other witnesses to retaliation. The Custodian argued that disclosure would chill cooperation with an investigation if inmates feared they would be exposed.

Regarding request item No. 2, the Custodian asserted that same was invalid because it failed to identify specific records sufficiently. MAG, 375 N.J. Super. at 546. The Custodian asserted that he would have been forced to review DOC's entire universe of records in order to determine whether any relate to Ms. Grillo, who was at a county facility. The Custodian noted that, were the request item not invalid, he likely would have responded that no records exist because DOC does not maintain county facility records.

The Custodian also noted that the Complainant appeared to amend his request item as part of the Denial of Access Complaint to seek specific personnel information about Ms. Grillo. The Custodian certified that the Complainant did not originally submit an OPRA request for this information but may do so at any time.

## Analysis

### Validity of OPRA Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination."* N.J.S.A. 47:1A-1.

MAG, 375 N.J. Super. at 546 (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008), the complainant filed an OPRA request for two entire prosecutor’s office files. The Council relied upon MAG, 375 N.J. Super. at 546, Bent, 381 N.J. Super. at 37, and Asarnow v. Dep’t of Labor, GRC Complaint No. 2006-24 (May 2006), in determining that the request was overbroad and a blanket request for a class of various documents rather than a request for a specific government record. As such, the Council found that the custodian met her burden of proof in denying access to the responsive records.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in [Asarnow, GRC 2006-24] and [Morgano, GRC 2007-190].

Id.

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<sup>4</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

In the instant complaint, a portion of the Complainant's request item No. 1 sought "documents." Further, requested item No. 2 sought "all records generated" by Ms. Grillo at any County facility. Neither the portion of request item No. 1 nor item No. 2 in its entirety seeks specific identifiable records. In fact, both would have required the Custodian to research every record in DOC over an indefinite amount of time to determine whether each record was responsive to the request: OPRA clearly does not require such actions.

Accordingly, because the portion of the requested item No. 1 seeking "documents" and request item No. 2 seeking "any records" represented a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, that portion of the request is invalid under OPRA. The Custodian had no legal duty to research his records to locate records potentially responsive to either the portion of the Complainant's request item No. 1 seeking "documents" or the entirety of requested item No. 2 seeking "any records." MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Feiler-Jampel, GRC 2007-190.

The GRC notes that, in the Denial of Access Complaint, the Complainant attempted to clarify his request and suggest that he was entitled to certain personnel information. However, said clarification had no bearing on the Custodian's denial of access and the Complainant did not seek basic allowable personnel information for Ms. Grillo.

### **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.

Personnel records are generally exempt from public access pursuant to N.J.S.A. 47:1A-10. However, said provision of OPRA does contain exceptions to that exemption. Specifically:

- an *individual's name, title, position*, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;
- personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and
- data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

Thus, although N.J.S.A. 47:1A-10 begins with a presumption of nondisclosure, there is certain information that a custodian is required to provide.

Disciplinary records are not contained within the excepted material allowed for disclosure under N.J.S.A. 47:1A-10. Therefore, for these types of records, the GRC has routinely held them to be exempt from disclosure. For example, in Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004) the Council held that:

The Complainant's request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent that "the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access" [emphasis added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

Id.

Further, in Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010) the Council held that:

Although the Custodian violated OPRA at N.J.S.A. 47:1A-5(g) by failing to provide a response to the Complainant's request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).

Id. at 8

Here, the Custodian identified one (1) record as responsive to the Complainant's OPRA request. However, he denied access to that record, citing, among other exemptions, N.J.S.A. 47:1A-10. That record, the Custodian certified, was an investigative report regarding employee misconduct. The Custodian also certified that the report resulted in Ms. Grillo's termination from DOC. Thus, the record at issue has the "indicia of [a] personnel" record. North Jersey Media Grp. v. Bergen Cnty. Prosecutor's Office, 405 N.J. Super. 386, 389 (App. Div. 2009). Further, a plain reading of OPRA and the GRC's prior case law supports that these types of personnel records are not disclosable because they do not fall within the exceptions set forth in N.J.S.A. 47:1A-10. For this reason, the GRC is satisfied that the Custodian lawfully denied access to the responsive record.

Accordingly, the Custodian lawfully denied access to the requested investigation report into employee misconduct because it is exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10. N.J.S.A. 47:1A-6; Merino, GRC No. 2003-110; Vaughn, GRC No. 2009-177. Because the requested report is exempt from public access under OPRA as



personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the portion of requested item No. 1 seeking “documents” and request item No. 2 seeking “any records” represented a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, that portion of the request is invalid under OPRA. The Custodian had no legal duty to research his records to locate records potentially responsive to either the portion of the Complainant’s request item No. 1 seeking “documents” or the entirety of request item No. 2 seeking “any 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); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
2. The Custodian lawfully denied access to the requested investigation report into employee misconduct because it is exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). Further, because the requested report is exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

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

April 18, 2017