



**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**

**January 26, 2016 Government Records Council Meeting**

Jeremy Mawhinney  
Complainant

Complaint No. 2015-85

v.

Egg Harbor City Police Department (Atlantic)  
Custodian of Record

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 2016 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 November 18, 2015 Interim Order because she responded in the prescribed time frame by providing records and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the requested arrest report, arrest docket, and traffic tickets, she did so believing that said items were exempt under OPRA. She ultimately complied with the Council’s November 18, 2015 Interim Order requiring disclosure of said items and provided all records responsive to the Complainant. 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 26<sup>th</sup> Day of January, 2016

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: January 29, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
January 26, 2016 Council Meeting**

**Jeremy Mawhinney<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-85**

**v.**

**Egg Harbor City Police Department (Atlantic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of any and all paperwork, documents, investigation reports, arrest reports, statements, witness statements, probable cause statements for an incident with Jesse K. Mawhinney on 02/08/13.

**Custodian of Record:** Meg Steep

**Request Received by Custodian:** March 25, 2015

**Response Made by Custodian:** March 25, 2015

**GRC Complaint Received:** March 27, 2015

**Background**

**November 17, 2015 Council Meeting:**

At its November 17, 2015 public meeting, the Council considered the November 10, 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, found that:

1. The Custodian certified that two responsive records, consisting of copies of a CAD activity report and a summons, were in fact disclosed to the Complainant.
2. The Custodian certified that the undisclosed responsive records contained, among other records, evidence submission, evidence receipts, lab reports, and return receipts for evidence. Such records contain investigatory information and, as such, would be exempt under OPRA. The Custodian bore her burden of proving that she lawfully denied access to the records, as they constitute criminal investigatory records and are thus exempt under OPRA. *See N.J.S.A. 47:1A-1.1, O’Shea*, 410 *N.J. Super.* at 371, *Nance*, GRC 2003-125, and *Janeczko*, GRC 2002-79 and 2002-80. *N.J.S.A. 47:1A-6.*

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

<sup>2</sup> Represented by James Carroll, III, Esq.

3. The portions of the Complainant's OPRA request concerning the arrest report and arrest docket should be disclosed with appropriate redactions. In addition, the traffic tickets mentioned in the SOI are also records required by law to be maintained or kept on file, and as such, are disclosable. Therefore, the Custodian unlawfully denied access to the above-mentioned records, and the Council orders that she disclose them to the Complainant.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> to the Executive Director.<sup>4</sup>**
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 November 18, 2015, the Council distributed its Interim Order to all parties.

On November 23, 2015, the Custodian responded to the Council's Interim Order, disclosing the arrest report, arrest docket, and associated traffic tickets to the Council and the Complainant.

#### Analysis

#### Compliance

At its November 17, 2015 meeting, the Council ordered the Custodian to disclose the requested arrest report, arrest docket, and associated traffic tickets and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On November 18, 2015, 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 November 25, 2015.

On November 23, 2015, the third business day after receipt of the Council's Order, the Custodian responded to the Order, disclosing the above-mentioned documents, and providing certified confirmation of compliance.

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<sup>3</sup> "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."

<sup>4</sup> 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.

Therefore, the Custodian complied with the Council's November 18, 2015 Interim Order because she responded in the prescribed time frame by providing records and simultaneously providing certified confirmation of compliance to the Executive Director.

### **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 denied access to the requested arrest report, arrest docket, and traffic tickets, she did so believing that said items were exempt under OPRA. She ultimately complied with the Council's November 18, 2015 Interim Order requiring disclosure of said items and provided all records responsive to the Complainant. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's November 18, 2015 Interim Order because she responded in the prescribed time frame by providing records and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the requested arrest report, arrest docket, and traffic tickets, she did so believing that said items were exempt under OPRA. She ultimately complied with the Council's November 18, 2015 Interim Order requiring disclosure of said items and provided all records responsive to the Complainant. 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: Husna Kazmir  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

January 19, 2016



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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
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CHARLES A. RICHMAN  
Commissioner

**INTERIM ORDER**

**November 17, 2015 Government Records Council Meeting**

Jeremy Mawhinney  
Complainant

Complaint No. 2015-85

v.

Egg Harbor City Police Department (Atlantic)  
Custodian of Record

At the November 17, 2015 public meeting, the Government Records Council ("Council") considered the November 10, 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:

1. The Custodian certified that two responsive records, consisting of copies of a CAD activity report and a summons, were in fact disclosed to the Complainant.
2. The Custodian certified that the undisclosed responsive records contained, among other records, evidence submission, evidence receipts, lab reports, and return receipts for evidence. Such records contain investigatory information and, as such, would be exempt under OPRA. The Custodian bore her burden of proving that she lawfully denied access to the records, as they constitute criminal investigatory records and are thus exempt under OPRA. *See* N.J.S.A. 47:1A-1.1, O'Shea, 410 N.J. Super. at 371, Nance, GRC 2003-125, and Janeczko, GRC 2002-79 and 2002-80. N.J.S.A. 47:1A-6.
3. The portions of the Complainant's OPRA request concerning the arrest report and arrest docket should be disclosed with appropriate redactions. In addition, the traffic tickets mentioned in the SOI are also records required by law to be maintained or kept on file, and as such, are disclosable. Therefore, the Custodian unlawfully denied access to the above-mentioned records, and the Council orders that she disclose them to the Complainant.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**

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<sup>1</sup> "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. 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 17<sup>th</sup> Day of November, 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: November 18, 2015**

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<sup>2</sup> 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  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 17, 2015 Council Meeting**

**Jeremy Mawhinney<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-85**

**v.**

**Egg Harbor City Police Department (Atlantic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of any and all paperwork, documents, investigation reports, arrest reports, statements, witness statements, probable cause statements for an incident with Jesse K. Mawhinney on 02/08/13.

**Custodian of Record:** Meg Steep

**Request Received by Custodian:** March 25, 2015

**Response Made by Custodian:** March 25, 2015

**GRC Complaint Received:** March 27, 2015

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

**Request and Response:**

On March 25, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing, partially denying the request, due to the records being exempt under N.J.S.A. 47:1A-1.1, et seq, and partially disclosing redacted documents, consisting of a CAD activity report and a summons.

**Denial of Access Complaint:**

On March 27, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant made no legal arguments regarding the alleged denial of access.

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

<sup>2</sup> Represented by James Carroll, III, Esq.

<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.

### Statement of Information:

On April 9, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 25, 2015, and that she responded in writing that same day. The Custodian stated that she disclosed a one page copy of a summons and a two page copy of a CAD Activity report, with social security and SBI numbers redacted. The Custodian located 17 pages of an investigation report, which contained evidence submission, traffic tickets, evidence receipts, lab reports, return receipt for evidence, and the arrest docket. She certified that the investigation report was not disclosed to the Complainant, pursuant to the criminal investigatory records exemption, N.J.S.A. 47:1A-1.1, et. seq.

### 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.

#### CAD Activity Report and Summons

The Custodian certified that two responsive records, consisting of copies of a CAD activity report and a summons, were disclosed to the Complainant.

#### Lab Report, Evidence Submission, Evidence Receipt and Return Receipt for Evidence

OPRA defines a "criminal investigatory record" as a record which is not required by law to be made, maintained, or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding (N.J.S.A. 47:1A-1.1).

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ... A government record shall not include the following ... *criminal investigatory records ...*”

N.J.S.A. 47:1A-1.1 (emphasis added).

For a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test: that is, “‘not be required by law to be made,’ and the record must ‘pertain[] to any criminal investigation or related civil enforcement proceeding.’” O’Shea v. Twp. of West

Milford, 410 N.J. Super. 371 (App. Div. 2009). The status of records purported to fall under the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 was examined by the GRC in Janeczko v. N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). The Council found that under OPRA, “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.”

Here, the Custodian certified that the undisclosed responsive records contained, among other records, evidence submission, evidence receipts, lab reports, and return receipts for evidence. Such records contain investigatory information and as such, would be exempt under OPRA. The Custodian bore her burden of proving that she did not unlawfully deny access to the responsive records as they constitute criminal investigatory records and are thus exempt under OPRA. See N.J.S.A. 47:1A-1.1, O’Shea, 410 N.J. Super. at 371, Nance, GRC 2003-125, and Janeczko, GRC 2002-79 and 2002-80. N.J.S.A. 47:1A-6.

#### Arrest Report, Arrest Docket, and Traffic Tickets

Notwithstanding the criminal investigatory exemption cited above, certain information with respect to a crime must be disclosed pursuant to N.J.S.A. 47:1A-3.b. The GRC has determined that specific arrest information must be disclosed, pursuant to Morgano v. Essex County Prosecutor’s Office, 2007-156 (February 2008).

A police arrest report is included as item number 0007-0000 for agency retention by the New Jersey Department of State, Division of Archives and Records Management, and until the expiration of its retention period has continuing value to the State of New Jersey. Because the arrest report *is required by law to be maintained or kept on file* (emphasis added), it is a government record pursuant to N.J.S.A. 47:1A-1.1., and is subject to disclosure with appropriate redactions pursuant to any lawful exemption under OPRA. Further, arrest reports typically contain the arrestee’s (defendant’s) name, age, residence, occupation, marital status, time and place of arrest, text of the charges, arresting agency, identity of the arresting personnel, amount of bail and whether it was posted. This is the same information that is mandated for disclosure pursuant to N.J.S.A. 47:1A-3.b.

Accordingly, the portions of the Complainant’s OPRA request concerning the arrest report and arrest docket should be disclosed with appropriate redactions. In addition, the traffic tickets mentioned in the SOI are also records required by law to be maintained or kept on file and, as such, are disclosable. Therefore, the Custodian unlawfully denied access to the above-mentioned records, and the Council orders that she disclose those records to the Complainant.

#### **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 Executive Director respectfully recommends the Council find that:

1. The Custodian certified that two responsive records, consisting of copies of a CAD activity report and a summons, were in fact disclosed to the Complainant.
2. The Custodian certified that the undisclosed responsive records contained, among other records, evidence submission, evidence receipts, lab reports, and return receipts for evidence. Such records contain investigatory information and, as such, would be exempt under OPRA. The Custodian bore her burden of proving that she lawfully denied access to the records, as they constitute criminal investigatory records and are thus exempt under OPRA. *See* N.J.S.A. 47:1A-1.1, O’Shea, 410 N.J. Super. at 371, Nance, GRC 2003-125, and Janeczko, GRC 2002-79 and 2002-80. N.J.S.A. 47:1A-6.
3. The portions of the Complainant’s OPRA request concerning the arrest report and arrest docket should be disclosed with appropriate redactions. In addition, the traffic tickets mentioned in the SOI are also records required by law to be maintained or kept on file, and as such, are disclosable. Therefore, the Custodian unlawfully denied access to the above-mentioned records, and the Council orders that she disclose them to the Complainant.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
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: Husna Kazmir  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

November 10, 2015

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<sup>4</sup> "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."

<sup>5</sup> 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.