



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 27, 2018 Government Records Council Meeting

Jeremy Mawhinney
Complainant

Complaint No. 2016-153

v.

Township of Galloway Police Department (Atlantic)
Custodian of Record

At the February 27, 2018 public meeting, the Government Records Council (“Council”) considered the February 20, 2018 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 did not unlawfully deny access to the Complainant’s first OPRA request pursuant to N.J.S.A. 2C:52 et seq., since the Custodian certified that the records related to the incident were expunged, and OPRA does not abrogate exemptions on public access pursuant to other statutes. See N.J.S.A. 47:1A-9(a); N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to the Complainant’s second OPRA request pursuant to N.J.S.A. 2A:4A-60(a), since the Custodian certified that the matter involves a juvenile and OPRA does not abrogate exemptions on public access to records pursuant to other statutes. See N.J.S.A. 47:1A-9(a) and Gabardi v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2008-259 (December 2009); N.J.S.A. 47:1A-6.

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 February, 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: March 2, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
February 27, 2018 Council Meeting**

**Jeremy Mawhinney¹
Complainant**

GRC Complaint No. 2016-153

v.

**Township of Galloway Police Department (Atlantic)²
Custodial Agency**

Records Relevant to Complaint:

1. Charges/Ticket/Summons for theft of gas 7/31/2006 Case #2006-22609, including full report, investigation report, CAD call, officer's narrative, and case notes.
2. All juvenile records of the Complainant from 1987-2005, including all investigation reports, charges, CAD calls, incident reports, officer's narratives, complaints, dispositions, and any/all contacts as a juvenile.

Custodian of Record: Captain Chris Doyle
Request Received by Custodian: May 4, 2016
Response Made by Custodian: May 10, 2016
GRC Complaint Received: May 27, 2016

Background³

Request and Response:

On April 27, 2016 the Complainant submitted two (2) Open Public Records Act ("OPRA") requests to the Custodian seeking the above-mentioned records. On May 10, 2016, the Custodian responded in writing, stating that no records exist pertaining to of the OPRA request No. 1, and denying access to OPRA request No. 2 pursuant to N.J.S.A. 2A:4A-60.

Denial of Access Complaint:

On May 27, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant did not elaborate further beyond his

¹ No legal representation listed on record.

² Represented by Michael Fitzgerald, Esq., of Fitzgerald and McGroarty (Linwood, 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.

claim of a denial of access. The Complainant included copies of his OPRA requests and the Custodian's May 10, 2016 response.

Statement of Information:

On July 14, 2016, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request of May 4, 2016. The Custodian stated he conducted a check of the Galloway Township Police Department's ("Department") computer system and records. The Custodian then certified that he responded in writing on May 10, 2016, stating that no responsive records exist regarding the criminal matter, and that the other request sought juvenile records, and was therefore prohibited from access under N.J.S.A. 2A:4A-60.

Beyond the Custodian's May 10, 2016 response, the Custodian certified that the Complainant's request regarding the criminal matter sought records that were ordered expunged under N.J.S.A. 2C:52 et seq. The Custodian responded thusly that no responsive records exist. The Custodian does not provide any further argument in his SOI.

Additional Information

On January 19, 2018, in response to a GRC inquiry on the status of the current matter, the Complainant noted that he had "an expungement done" regarding the records at issue, and that he believes the Custodian is improperly releasing those records to other law enforcement agencies.

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.

OPRA further provides that:

[t]he provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . *any other statute*; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

Expunged Records

New Jersey law defines expungement and the records subject to expungement as:

- a. Except as otherwise provided in this chapter, expungement shall mean the extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.
- b. Expunged records shall include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, "rap sheets" and judicial docket records.

[N.J.S.A. 2C:52-1.]

New Jersey law also describes the effect of records ordered expunged by the court and its accessibility to public inspection:

If an order of expungement of records of arrest or conviction under this chapter is granted by the court, all the records specified in said order shall be removed from the files of the agencies which have been noticed of the pendency of petitioner's motion and which are, by the provisions of this chapter, entitled to notice, and shall be placed in the control of a person who has been designated by the head of each such agency which, at the time of the hearing, possesses said records. That designated person shall, except as otherwise provided in this chapter, insure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose. *In response to requests for information or records of the person who was arrested or convicted, all noticed officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information.*

[N.J.S.A. 2C:52-15 (emphasis added).]

In this matter, the Complainant's first OPRA request sought records pertaining to a past criminal offense. In the Custodian's SOI, he certified that the records sought were expunged by a court, albeit without further elaboration. However, the Complainant admitted in his January 19, 2018 correspondence that the records at issue had been expunged. OPRA explicitly defers to exemptions on public access to records in accordance with existing statute. See N.J.S.A. 47:1A-9(a). Additionally, New Jersey's law on records expungement is clear in that noticed agencies and departments are required to respond "that there is no record information," to requests for information or records that have been expunged. N.J.S.A. 2C:52-15. Thus, the Custodian's response to the Complainant's OPRA request satisfied this provision.

Therefore, the Custodian did not unlawfully deny access to the Complainant's first OPRA request pursuant to N.J.S.A. 2C:52 et seq., since the Custodian certified that the records related to the incident were expunged, and OPRA does not abrogate exemptions on public access pursuant to other statutes. See N.J.S.A. 47:1A-9(a); N.J.S.A. 47:1A-6.

Juvenile Records

The Council has previously held that pursuant to N.J.S.A. 2A:4A-60(a), public access to “[s]ocial, medical, psychological, legal and other records of the court and probation division, and records of law enforcement agencies” involving juveniles has been substantially restricted. (Emphasis added). See Gabardi v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2008-259 (December 2009).

In the instant matter, the Complainant's second OPRA request sought his juvenile records from 1987-2005. However, neither OPRA nor N.J.S.A. 2A:4A-60 et seq. provide an exception for the juvenile in question on access to his records outside of a court proceeding.

Therefore, the Custodian did not unlawfully deny access to the Complainant's second OPRA request pursuant to N.J.S.A. 2A:4A-60(a), since the Custodian certified that the matter involves a juvenile and OPRA does not abrogate exemptions on public access to records pursuant to other statutes. See N.J.S.A. 47:1A-9(a) and Gabardi, GRC 2008-259; N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainant's first OPRA request pursuant to N.J.S.A. 2C:52 et seq., since the Custodian certified that the records related to the incident were expunged, and OPRA does not abrogate exemptions on public access pursuant to other statutes. See N.J.S.A. 47:1A-9(a); N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to the Complainant's second OPRA request pursuant to N.J.S.A. 2A:4A-60(a), since the Custodian certified that the matter involves a juvenile and OPRA does not abrogate exemptions on public access to records pursuant to other statutes. See N.J.S.A. 47:1A-9(a) and Gabardi v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2008-259 (December 2009); N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado
Staff Attorney

February 20, 2018