



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**October 30, 2018 Government Records Council Meeting**

Regino De La Cruz, Esq.  
Complainant

Complaint No. 2016-229

v.

City of Union City (Hudson )  
Custodian of Record

At the October 30, 2018 public meeting, the Government Records Council (“Council”) considered the October 23, 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. Because Mr. Cantatore failed to provide a specific lawful basis for denying access, his response to the Complainant’s August 11, 2016 OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Schwarz v. N.J. Dep’t of Human Serv., GRC Complaint No. 2004-60 (February 2005); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).
2. Notwithstanding Mr. Cantatore’s insufficient response, he did not unlawfully deny access to the Complainant’s August 11, 2016 OPRA request seeking every police accident or incident report from the preceding seven (7) days. N.J.S.A. 47:1A-6. The Complainant’s request fails to include a location, the names of parties, or any other identifiable information to be a valid request. See MAG Entm’t, LLC. V. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005), Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), De La Cruz v. City of Union City (Hudson), GRC Complaint No. 2015-14 (Interim Order dated December 13, 2016), and Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).
3. Mr. Cantatore violated N.J.S.A. 47:1A-5(g) by failing to provide a lawful basis for denying the Complainant’s August 11, 2016 OPRA request. However, the evidence in the record demonstrates that the Complainant’s August 11, 2016 OPRA request was invalid for failing to sufficiently identify government records. Moreover, the evidence of record does not indicate that Mr. Cantatore’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Cantatore’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 30<sup>th</sup> Day of October, 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: November 1, 2018**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
October 30, 2018 Council Meeting**

**Regino De La Cruz, Esq.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-229**

v.

**City of Union City (Hudson)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

Via fax or e-mail: “Copies of all police accident reports for both auto and non-auto accidents for the following dates: Last 7 days available”

**Custodian of Record:** Erin Knoedler

**Requests Received by Custodian:** August 11, 2016

**Response Made by Custodian:** August 15, 2016

**GRC Complaint Received:** August 16, 2016

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

**Request and Response:**

On August 11, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 15, 2016, Dominick Cantatore (“Mr. Cantatore”), Acting Municipal Clerk, responded in writing, stating that the portion of the request seeking non-auto accident reports is protected information pursuant to the “N.J. Law Enforcement Handbook p. 645 volume 3, 2014 Edition.” (“L.E. Handbook”).

**Denial of Access Complaint:**

On August 16, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he is an attorney investigating cases involving individuals who have fallen and received injuries, and therefore made the OPRA request for auto and non-auto accidents. The Complainant contended that incident, or non-auto accident reports are not protected from disclosure as claimed by Mr. Cantatore.

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

<sup>2</sup> Represented by Sheri K. Siegelbaum, Esq., of Scarinci & Hollenbeck, LLC (Lyndhurst, NJ).

<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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

### Statement of Information:

On September 15, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 11, 2016. The Custodian certified that Mr. Cantatore responded in writing on August 15, 2016, stating that the portion of the request seeking police incident reports is protected information.

The Custodian asserted that the requested reports were protected from disclosure in accordance with the L.E. Handbook, which states that police incident reports are not accessible to non-police personnel except upon court order or to comply with statute, regulation, or executive order. The Custodian contended that no such court order, statute, regulation, or executive order exists.

### Analysis

#### Sufficiency of Response

OPRA provides that “[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g).

In Schwarz v. N.J. Dep’t of Human Serv., GRC Complaint No. 2004-60 (February 2005), the Council held that that specific citations to the law that allows a denial of access are required at the time of the denial. See also Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010) (noting that N.J.S.A. 47:1A-5(g) requires a custodian of record to indicate the specific basis for noncompliance).

In this matter, Mr. Cantatore stated that the records sought by the Complainant were “protected information” pursuant to the L.E. Handbook. However, there is no evidence to suggest that the L.E. Handbook in itself is a statute, regulation, or guideline having the force of law. Additionally, while Mr. Cantatore provided a specific citation within the L.E. Handbook in his response, he did not include a copy of the page cited, or quoted language for the Complainant to reference. See De La Cruz v. City of Union City (Hudson), GRC Complaint No. 2015-14 (Interim Order dated December 13, 2016) (custodian provided a photocopy of the cited page of the LE Handbook). Nor was it included in the SOI.

Therefore, because Mr. Cantatore failed to provide a specific lawful basis for denying access, his response to the Complainant’s August 11, 2016 OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Schwarz, GRC 2004-60; Renna, GRC 2008-86.

#### 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.

The facts in this matter are substantially similar to those in De La Cruz, GRC 2015-14, which involved the same parties. There, the Complainant sought police incident and accident reports from the past three (3) years concerning a particular property. The Custodian denied access on the same grounds as the current matter. The Council, relying upon North Jersey Media Group, Inc. (“NJMG”) v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015), aff’d in part, 229 N.J. Super. 541 (2017), found that blanket denials for access to police incident reports as criminal investigatory records are unacceptable, as such records may not satisfy the elements required to qualify as a criminal investigatory record.<sup>4</sup> Therefore, Mr. Cantatore’s response to the Complainant’s request is improper.

Still, a request for a specific type of document or subject matter must still be accompanied by a sufficient amount of identifying information. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), and Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012). In Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015), the complainant sought “police reports and/or complaints signed against [Kristen Ellis].” The Council held that while the complainant’s request for “police reports” and “complaints” reasonably described the subject matter, the complainant failed to provide a specific date or range of dates within his request. Id. at 3. The Council therefore found that the complainant’s request was overly broad. Id. See also Kovacs v. Newark Police Dep’t (Essex), GRC Complaint No. 2014-316 (Interim Order dated June 30, 2015), reconsidered on other grounds, (Final Decision dated October 27, 2015) (request for police reports containing the name of an individual sufficiently identifies the subject matter).

Unlike in De La Cruz, GRC 2015-14, where the Complainant specifically requested police incident reports pertaining to an address, the Complainant in this matter sought every police incident report received within the preceding seven (7) days. Without additional information, such as an address or particular individual as the subject of the reports, the request does not provide enough identifiable information to be a valid OPRA request.

Therefore, notwithstanding Mr. Cantatore’s insufficient response, he did not unlawfully deny access to the Complainant’s August 11, 2016 OPRA request seeking every police accident or incident report from the preceding seven (7) days. N.J.S.A. 47:1A-6. The Complainant’s request fails to include a location, the names of parties, or any other identifiable information to be a valid request. See MAG, 375 N.J. Super. at 546, Burke, 429 N.J. Super. at 176, De La Cruz, GRC 2015-14, and Love, GRC 2014-223.

### **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

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<sup>4</sup> The elements required are that the record 1) is not required by law to be made, maintained or kept on file, and 2) pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A. 47:1A-1.1.

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 (E.C.E.S. v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, Mr. Cantatore violated N.J.S.A. 47:1A-5(g) by failing to provide a lawful basis for denying the Complainant’s August 11, 2016 OPRA request. However, the evidence in the record demonstrates that the Complainant’s August 11, 2016 OPRA request was invalid for failing to sufficiently identify government records. Moreover, the evidence of record does not indicate that Mr. Cantatore’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Cantatore’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 Council Staff respectfully recommends the Council find that:

1. Because Mr. Cantatore failed to provide a specific lawful basis for denying access, his response to the Complainant’s August 11, 2016 OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Schwarz v. N.J. Dep’t of Human Serv., GRC Complaint No. 2004-60 (February 2005); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).
2. Notwithstanding Mr. Cantatore’s insufficient response, he did not unlawfully deny access to the Complainant’s August 11, 2016 OPRA request seeking every police accident or incident report from the preceding seven (7) days. N.J.S.A. 47:1A-6. The Complainant’s request fails to include a location, the names of parties, or any other identifiable information to be a valid request. See MAG Entm’t, LLC. V. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005), Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), De La Cruz v. City of Union City (Hudson), GRC Complaint No. 2015-14 (Interim Order dated December 13, 2016), and

Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).

3. Mr. Cantatore violated N.J.S.A. 47:1A-5(g) by failing to provide a lawful basis for denying the Complainant's August 11, 2016 OPRA request. However, the evidence in the record demonstrates that the Complainant's August 11, 2016 OPRA request was invalid for failing to sufficiently identify government records. Moreover, the evidence of record does not indicate that Mr. Cantatore's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Cantatore'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: Samuel A. Rosado, Esq.  
Staff Attorney

October 23, 2018