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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 25, 2019 Government Records Council Meeting

Serges Demefack (o/b/o American Friends
Service Committee Newark Office)

Complaint No. 2017-75

Complainant

v.

Monmouth County
Custodian of Record

At the June 25, 2019 public meeting, the Government Records Council (“Council”) considered the June 18, 2019 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 portion of Item No. 1 of the Complainant’s request seeking “all records” and “aggregate data” relating to immigration detainers since 2014 is invalid because it failed to identify a specific record. 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); N.J. Builders Ass’n v. N.J. 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). Thus, the Custodian lawfully denied access to this portion of the request. N.J.S.A. 47:1A-6.
2. The portion of Item No. 1 of the Complainant’s request seeking records identified as: “I-247, I-247D, I-247N, and I-247X” regarding immigration detainers from 2014 to the date of the request is valid. Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012) Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010); MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). Thus, the Custodian unlawfully denied access to this portion of the request on the basis that it was invalid. N.J.S.A. 47:1A-6.
3. Item No. 2 of the Complainant’s request seeking “all records of communication with ICE regarding inmates in Monmouth County jail, their immigration status, the existence of or request for an immigration detainer or immigration warrant, or the transfer of an inmate to federal immigration custody from 2014 to present” is valid. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). Thus, the Custodian unlawfully denied access to this portion of the request on the basis that it was invalid. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure as the

evidence of record demonstrates that the Complainant provided responsive records as part of the SOI.¹

4. The portion of Item No. 1 of the Complainant's request seeking data on immigration detainers contained in I-247, I-247D, I-247N, and I-247X forms are exempt from access pursuant to 8 C.F.R. 236.6. N.J.S.A. 47:1A-9(a). Thus, notwithstanding the request's validity, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.
5. The Custodian did not unlawfully deny access to Item No. 3 of the Complainant's request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that she disclosed all records responsive to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint Nos. 2009-156, 2009-157, 2009-158 (Interim Order dated April 28, 2010); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).
6. The Custodian unlawfully denied access to portions of Item No. 1, and Item No. 2 of the Complainant's OPRA request on the basis that they were invalid. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to Item No. 1 in that the responsive records were exempt from access pursuant to 8 C.F.R. 236.6. N.J.S.A. 47:1A-9(a). Additionally, the Custodian provided responsive records to Item No. 2 as part of the SOI and provided responsive records to Item No. 3. 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 25th Day of June 2019

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: June 28, 2019

¹ The GRC does not address the Custodian's redactions made to the responsive record because the issue was not raised by the Complainant at any point during the pendency of this complaint.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
June 25, 2019 Council Meeting**

**Serges Demefack (o/b/o American Friends¹
Service Committee Newark Office)
Complainant**

GRC Complaint No. 2017-75

v.

**Monmouth County²
Custodial Agency**

Records Relevant to Complaint: Electronic copies saved on a CD or DVD of:

- 1) All records, including aggregate data, regarding immigration detainers issued to Monmouth County Jail, including forms I-247, I-247D, I-247N, and I-247X from 2014 to present.
- 2) All records of communication with ICE regarding inmates in Monmouth County jail, their immigration status, the existence of or request for an immigration detainer or immigration warrant, or the transfer of an inmate to federal immigration custody from 2014 to present.
- 3) Any policies, protocols, or bulletins instructing Monmouth County law enforcement on handling issues related to immigration status, immigration detainers, or immigration warrants from 2014 to present.

Custodian of Record: Marion Masnick
Request Received by Custodian: June 9, 2016
Response Made by Custodian: June 22, 2016
GRC Complaint Received: April 10, 2017

Background³

Request and Response:

On June 8, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 22, 2016, Andrea I. Bazer, Esq. (“Ms. Bazer”) responded in writing on behalf of the Custodian denying access to Item Nos.

¹ No legal representation listed on record.

² Represented by Patricia B. Quelch, Esq., of Helmer, Conley & Kasselman, P.A. (Freehold, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

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1 and 2 of the request, asserting that both are invalid as overly broad, unclear, and failed to identify specific government records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). Ms. Bazer also stated that the items would require the Custodian to conduct research. Bart v. Passaic Cnty. Public Hous. Auth., 406 N.J. Super. 445 (App. Div. 2009).

As to Item No. 3, Ms. Bazer provided a copy of a Memorandum of Agreement between the United States Immigration and Customs Enforcement (“ICE”) and the Monmouth County Sheriff’s Office (“MCSO”), totaling nineteen (19) pages. Ms. Bazer added that since it appeared that the Complainant was seeking records held by ICE, the Complainant should contact ICE to obtain the requested records.

Denial of Access Complaint:

On April 10, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that Item No. 1 specifically identified the forms requested and a date range. As to Item No. 2, the Complainant stated that the Custodian would not have to create new information to produce the records, but rather reproduce the requested communications and “to go or look through carefully” their correspondence. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007).

Lastly, on the response to Item No. 3, the Complainant questioned that the search conducted by the Custodian would result in one (1) responsive record. Additionally, the Complainant asserted the provided record was dated outside of the requested time period and the contents suggested that responsive records should exist from 2014 onwards.

Statement of Information:⁴

On September 28, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 9, 2016. The Custodian certified that Ms. Bazer responded on her behalf on June 22, 2016. The Custodian restated the reasons for the denial of Item No. 1 and 2 mentioned above, asserting that they were overly broad and failed to identify specific government records. The Custodian also contended that the record provided in response to Item No. 3 was the only responsive record located.

In addition to the legal authority asserted in her June 22, 2016 response, the Custodian contended that federal regulation 8 C.F.R. 236.6 prohibits the public dissemination of detainee information except as provided under federal laws, regulations, or executive orders.

Notwithstanding, the Custodian certified that a member of the Monmouth County Sheriff’s Office IT department conducted a search for responsive e-mails using ICE’s domain name, which produced several hundred e-mails. The Custodian certified that an additional search was conducted using keywords used by the Complainant, narrowing the results. Upon review, the Custodian certified that she produced 155 pages of redacted e-mails responsive to Item No. 2 to the

⁴ The complaint was referred to mediation on April 25, 2017. The Complaint was referred back from mediation on September 21, 2017.

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Complainant as part of the SOI.⁵

Analysis

Validity of 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. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶ N.J. Builders Ass’n v. N.J. 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).

⁵ The Custodian provided additional information regarding correspondence between the parties while this complaint was in mediation. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004). Serges Demefack (o/b/o American Friends Service Committee Newark Office) v. Monmouth County, 2017-75 – Findings and Recommendations of the Council Staff

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; Donato, GRC 2005-182. The second is those requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

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 v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

Here, a portion of Item No. 1 of the Complainant’s request sought “all records” and “aggregate data” regarding immigration detainers from 2014 to the date of the request. The Custodian denied access to said portion of the request as invalid and reaffirmed the basis in the SOI. MAG and its progeny support that the “all records” and “aggregate data” portion of the

request is invalid. Furthermore, this portion of the request would require the Custodian conduct research to locate potentially responsive records.

Accordingly, the portion of Item No. 1 of the Complainant's request seeking "all records" and "aggregate data" relating to immigration detainers since 2014 is invalid because it failed to identify a specific record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Feiler-Jampel, GRC 2007-190. Thus, the Custodian lawfully denied access to this portion of the request. N.J.S.A. 47:1A-6.

Alternatively, in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010), the Appellate Division evaluated a request for "[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present." The court determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, in Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), the court found a request for communications regarding the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information.

In the current matter, Item No. 1 of the Complainant's request identified specific records to locate regarding immigration detainers since 2014: I-247, I-247D, I-247N, and I-247X. With respect to these records, the Complainant satisfied the threshold set forth in Burnett and Burke.

Therefore, the portion of Item No. 1 of the Complainant's request seeking records identified as: "I-247, I-247D, I-247N, and I-247X" regarding immigration detainers from 2014 to the date of the request is valid. Burke, 429 N.J. Super. at 176; Burnett, 415 N.J. Super. at 508; MAG, 375 N.J. Super. at 546. Thus, the Custodian unlawfully denied access to this portion of the request on the basis that it was invalid. N.J.S.A. 47:1A-6.

Regarding requests for e-mails and correspondence, the GRC has established specific criteria deemed necessary under OPRA to request an e-mail communication. See Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See Elcavage, GRC 2009-07; Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).

Here, Item No. 2 of the Complainant's request sought "all records of communication" between ICE and Monmouth County regarding inmates' immigration status, "the existence or request for an immigration detainer or immigration warrant, or the transfer of an inmate to federal immigration custody from 2014 to present." The Custodian denied access to this request item as invalid; however the request contains all the necessary criteria as prescribed in Elcavage and

Armenti. For this reason, the GRC disagrees that Item No. 2 of the request is invalid, as it conforms to the requirements set forth for requesting communications.

Accordingly, Item No. 2 of the Complainant's request seeking "all records of communication with ICE regarding inmates in Monmouth County jail, their immigration status, the existence of or request for an immigration detainer or immigration warrant, or the transfer of an inmate to federal immigration custody from 2014 to present" is valid. Elcavage, GRC 2009-07; Armenti, 2009-154. Thus, the Custodian unlawfully denied access to this portion of the request on the basis that it was invalid. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure as the evidence of record demonstrates that the Complainant provided responsive records as part of the SOI.⁷

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.

Data contained in I-247, I-247D, I-247N, and I-247X forms

OPRA also provides that "[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; 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).

8 C.F.R. 236.6 states that:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service . . . shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all . . . requests for public disclosure of such information

In the current matter, a portion of Item No. 1 of the Complainant's request seeks data and information on immigration detainees contained in identified records. In the SOI, the Custodian asserted that the records were exempt from disclosure pursuant to this regulation. Without any

⁷ The GRC does not address the Custodian's redactions made to the responsive record because the issue was not raised by the Complainant at any point during the pendency of this complaint.

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evidence to the contrary, and based on a plain reading of the regulation, the GRC is satisfied that the records are exempt from disclosure.

Accordingly, the portion of Item No. 1 of the Complainant's request seeking data on immigration detainers contained in I-247, I-247D, I-247N, and I-247X forms are exempt from access pursuant to 8 C.F.R. 236.6. N.J.S.A. 47:1A-9(a). Thus, notwithstanding the request's validity, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

Policies, protocols, and bulletins

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint Nos. 2009-156, 2009-157, 2009-158 (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

In this matter, the Custodian provided a nineteen (19) page memorandum in response to Item No. 3 of the Complainant's OPRA request. The Complainant asserted that there should be additional responsive records in Monmouth County's possession. However, the Complainant did not provide evidence contrary to the Custodian's certification.

Therefore, the Custodian did not unlawfully deny access to Item No. 3 of the Complainant's request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that she disclosed all records responsive to the Complainant. Danis, GRC 2009-156, *et seq.*; Burns, 2005-68; Holland, 2014-63, *et seq.*

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)).

In the instant matter, the Custodian unlawfully denied access to portions of Item No. 1, and Item No. 2 of the Complainant's OPRA request on the basis that they were invalid. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to Item No. 1 in that the responsive records were exempt from access pursuant to 8 C.F.R. 236.6. N.J.S.A. 47:1A-9(a). Additionally, the Custodian provided responsive records to Item No. 2 as part of the SOI and provided responsive records to Item No. 3. 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 Council Staff respectfully recommends the Council find that:

1. The portion of Item No. 1 of the Complainant's request seeking "all records" and "aggregate data" relating to immigration detainers since 2014 is invalid because it failed to identify a specific record. 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); N.J. Builders Ass'n v. N.J. 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). Thus, the Custodian lawfully denied access to this portion of the request. N.J.S.A. 47:1A-6.
2. The portion of Item No. 1 of the Complainant's request seeking records identified as: "I-247, I-247D, I-247N, and I-247X" regarding immigration detainers from 2014 to the date of the request is valid. Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012) Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010); MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). Thus, the Custodian unlawfully denied access to this portion of the request on the basis that it was invalid. N.J.S.A. 47:1A-6.
3. Item No. 2 of the Complainant's request seeking "all records of communication with ICE regarding inmates in Monmouth County jail, their immigration status, the existence of or request for an immigration detainer or immigration warrant, or the transfer of an inmate to federal immigration custody from 2014 to present" is valid. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). Thus, the Custodian unlawfully denied access to this

portion of the request on the basis that it was invalid. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure as the evidence of record demonstrates that the Complainant provided responsive records as part of the SOI.⁸

4. The portion of Item No. 1 of the Complainant's request seeking data on immigration detainees contained in I-247, I-247D, I-247N, and I-247X forms are exempt from access pursuant to 8 C.F.R. 236.6. N.J.S.A. 47:1A-9(a). Thus, notwithstanding the request's validity, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.
5. The Custodian did not unlawfully deny access to Item No. 3 of the Complainant's request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that she disclosed all records responsive to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint Nos. 2009-156, 2009-157, 2009-158 (Interim Order dated April 28, 2010); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).
6. The Custodian unlawfully denied access to portions of Item No. 1, and Item No. 2 of the Complainant's OPRA request on the basis that they were invalid. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to Item No. 1 in that the responsive records were exempt from access pursuant to 8 C.F.R. 236.6. N.J.S.A. 47:1A-9(a). Additionally, the Custodian provided responsive records to Item No. 2 as part of the SOI and provided responsive records to Item No. 3. 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: Samuel A. Rosado
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⁸ The GRC does not address the Custodian's redactions made to the responsive record because the issue was not raised by the Complainant at any point during the pendency of this complaint.

Serges Demefack (o/b/o American Friends Service Committee Newark Office) v. Monmouth County, 2017-75 – Findings and Recommendations of the Council Staff