



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**December 15, 2020 Government Records Council Meeting**

Rotimi Owoh, Esq. (o/b/o African  
American Data and Research Institute)  
Complainant

Complaint No. 2018-144

v.  
Middletown Township Police Department (Monmouth)  
Custodian of Record

At the December 15, 2020 public meeting, the Government Records Council (“Council”) considered the December 8, 2020 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 the matter should be dismissed as materially defective, since the records are not immediate access records and the Complainant verified his complaint before the statutory time period provided for the Custodian to respond had expired. N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6; Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-363 (July 2014); and Curcio v. Wall Twp. Police Dep’t (Monmouth), GRC Complaint No. 2018-98 (June 2018). Additionally, the Council declines to address the remaining issues as they are not properly before it.

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 15<sup>th</sup> Day of December 2020

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: December 17, 2020**

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**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 15, 2020 Council Meeting**

**Rotimi Owoh, Esq. (On Behalf of African  
American Data & Research Institute)<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-144**

v.

**Middletown Township Police Department (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

1. Copies of Driving While Intoxicated/Driving under the Influence (“DWI/DUP”) complaints, summonses, and tickets prepared and filed by the Police Department from January 2016 through present.
2. Drug possession complaints, summonses, and tickets prepared and filed by the Police Department from January 2016 through present.
3. Copies of the Police Department’s “Arrest Listings” from January 2016 to present.
4. Copies of drug paraphernalia complaints, summonses, and tickets prepared and filed by the Police Department from January 2016 through present.

**Custodian of Record:** Lieutenant John E. Kaiser  
**Request Received by Custodian:** July 16, 2018  
**Response Made by Custodian:** July 17, 2018  
**GRC Complaint Received:** July 23, 2018

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

**Request and Response:**

On July 16, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 17, 2018, the Custodian responded in writing directing the Complainant to Middletown Municipal Court (“MMC”) to obtain records responsive to OPRA request item Nos. 1, 2, and 4. The Custodian further denied access to OPRA request item No. 3 stating that no records exist because the Middletown Township Police Department (“MTPD”) did not “maintain any record under that name or nomenclature.” On the same day, the Complainant responded asking that the Custodian reconsider his denial. The

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<sup>1</sup> The Complainant represents the African American Research & Data Institute.

<sup>2</sup> Represented by Brian M. Nelson, Esq., of Archer & Griener, P.C. (Red Bank, 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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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Complainant noted that other police departments were able to provide the records sought here. The Complainant further noted that “Arrest Listings” are included in the State’s Records Retention and Disposition Schedule at M900000, Record Series No. 0008-0001.

The Custodian responded via e-mail asking to engage in a verbal conversation to address “some confusion over terminology”, noting that “different agencies often utilize different names for different records.” The Complainant responded via e-mail attaching the relevant portions of M900000 as his clarification.

#### Denial of Access Complaint:

On July 23, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the Custodian failed to advise whether he would reconsider his denial of access. The Complainant contended that other police departments in the State have been able to disclose responsive records. The Complainant also contended that the State’s Records Retention and Disposition Schedule requires agencies to maintain the records sought. The Complainant further argued that prior GRC case law supports the disclosure of summonses and complaints. See Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004).

The Complainant thus requested that the GRC determine that the Custodian unlawfully denied access to the responsive records. The Complainant further requested that the GRC find that he is a prevailing party entitled to an award of attorney’s fees.

#### Supplemental Response:

On July 26, 2018, the Custodian responded in writing asserting that the MTPD was disappointed that the Complainant chose to file a complaint instead of obtaining records from the MMC and providing clarification of OPRA request item No. 3. The Custodian noted that he was attempting to assist the Complainant and at no time “intentionally” denied the subject OPRA request. The Custodian stated that the seven (7) business day time frame had yet to expire and, despite the Complainant’s lack of assistance, he has been attempting to fulfill the OPRA request. The Custodian stated that based on this effort, he attached what he believed to be the “Arrest Lists” responsive to OPRA request item No. 3.

The Custodian further sought an additional twenty-one (21) business days to attempt to search for, locate, compile, and process records responsive to the other request items. The Custodian noted that he anticipated a special service charge would apply due to the voluminous nature of the OPRA request and the extraordinary amount of time necessary to process it.

On the same day, the Complainant responded asserting that he e-mailed clarification for OPRA request item No. 3 to the Custodian on July 17, 2018. The Complainant noted that he also sought reconsideration of the Custodian’s response to the remaining OPRA request items and did not receive a reply. The Complainant argued that he did not need to go to another agency to obtain these records, and the Custodian’s extension request several days after the complaint filing proved that same was a catalyst to compel disclosure. The Complainant stated that the matter is now before

the GRC, but that the Custodian could send responsive summonses and complaints within the additional twenty-one (21) business day period.

On the same day, the Custodian responded arguing that MTPD has been working on the subject OPRA request since receipt. The Custodian further argued that this complaint was not the catalyst for MTPD's actions. The Custodian sought acknowledgement that the Complainant wished to proceed with the remainder of the OPRA request and any potential special service charge. The Complainant responded confirming that he wished to continue.

Statement of Information:

On August 10, 2018, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on July 16, 2018. The Custodian certified that he responded in writing on July 17, 2018 directing the Complainant to the MMC for item Nos. 1, 2, and 4 and stating that no records responsive to item No. 3 exist. The Custodian affirmed that after receiving the Complainant's request to reconsider his response, he attempted to obtain clarification via telephone. The Custodian averred that the Complainant instead sent another e-mail and attached retention schedules. The Custodian certified that less than two (2) days later, on July 19, 2018, he received the instant complaint.

The Custodian contended that the instant complaint is unripe for adjudication because the Complainant filed it prior to the expiration of the applicable seven (7) business day time frame. N.J.S.A. 47:1A-5(i); Alexander v. N.J. Dep't of Corr., GRC Complaint No. 2014-70 (April 2014). The Custodian argued that he received the Complainant's OPRA request on July 16, 2018 and request to reconsider the original response on July 17, 2018. The Custodian argued that he had at least through July 25, 2018 to respond and the MTPD continued to attempt to respond to the subject OPRA request. The Custodian argued that instead of affording him the statutory time frame, the Complainant filed this complaint erroneously arguing that the Custodian "did not respond" to his request for reconsideration and that the request was "essentially" denied. The Custodian argued that the evidence of record refutes this assertion and the GRC should dismiss this complaint as materially defective.

The Custodian finally argued that he could not respond to the SOI search question because same remains ongoing. The Custodian contended that no denial of access occurred because the responsive records were being compiled per an extension agreed to by the Complainant in his July 26, 2018.

Additional Submissions:

On August 11, 2018, the Complainant filed a letter brief refuting the Custodian's SOI. Therein, the Complainant recounted the procedural history of this complaint. The Complainant contended that notwithstanding his request to the Custodian to reconsider the denial and filing of this complaint on July 19, 2018, the Custodian failed to advise whether he intended to reconsider his initial response until July 26, 2018. The Complainant noted that he was in receipt of the records sought in OPRA request item No. 3 and is still awaiting a response to the remaining items within the twenty-one (21) business day time frame.

The Complainant argued that the remaining issues involve whether this complaint was the catalyst for the Custodian's disclosure and extension of time to address the remaining OPRA request items. The Complainant further argued that the other remaining issue is whether he is a prevailing party here. The Complainant contended that all three issues should be answered in the affirmative and he should be awarded prevailing party attorney's fees for the reasons discussed below.

The Complainant argued that police departments in the State were required to retain summonses and complaints until thirty (30) days after disposition of same. M900000, Record Series No. 0082-0000.<sup>4</sup> The Complainant further asserted that municipalities were required to retain these records for at least fifteen (15) years if they are part of a "Municipal Prosecutor's Case File." M170000, Records Series No. 0001-0000. The Complainant argued that because MTPD police officers and prosecutors were Township employees, their records were subject to access under OPRA and should have been disclosed accordingly. The Complainant argued that he sought records for the last two (2) years, and thus those records should have been disclosed. The Complainant further contended that if records were in storage, OPRA required the Custodian to obtain an extension of time to respond. The Complainant argued that instead of disclosing records, the Custodian denied access and required the Complainant to submit a request with the MMC.

The Complainant noted that MTPD's obligation to disclose responsive records was not diminished simply because the Judiciary also made them available to the public. See Keddie v. Rutgers Univ., 144 N.J. 377 (1996). The Complainant also noted that it was far cheaper to obtain the responsive records via OPRA than through R. 1:38. The Complainant argued that OPRA should not be used as "a money generating scheme (another form of taxation) for government." The Complainant thus argued that MTPD should be required to disclose the responsive records.

The Complainant next reiterated his Denial of Access Complaint argument that the Council already decided that summonses and complaints were subject to disclosure. The Complainant stated that in Merino, GRC 2003-110, the Council held that the custodian was required to disclose responsive summonses that existed regardless of whether they exceeded their retention period. The Complainant contended that the Council's decision supported his position that the Custodian should have disclosed all responsive summonses and complaints it retained. The Complainant further contended that Merino, GRC 2003-110 was consistent with court decisions where defendants argued that a requestor was required to obtain records from the courts. O.R. v. Plainsboro Twp., Docket No. MID-L-5752-16; AADARI v. Woodbridge Twp., Docket No. MID-L-2052-18 (August 1, 2018). The Complainant further noted that many other municipalities throughout the State have complied recently with identical requests.<sup>5</sup> The Complainant identified fourteen (14) such agencies and argued that their actions prove that police departments in the State have access to summonses and complaints.

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<sup>4</sup> The Complainant noted that his experience was that DUI/DWI or drug possession charges normally included sample testing by the New Jersey State Police. The Complainant alleged that this testing averaged between three (3) and six (6) months.

<sup>5</sup> The Complainant identified twenty-nine (29) municipalities that complied with similar requests submitted by the Complainant on behalf of AADARI.

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Lastly, the Complainant argued that he should be “declared the prevailing party” and awarded attorney’s fees. The Complainant contended that this complaint resulted in the July 26, 2018 disclosure. The Complainant further noted that the Custodian has promised to disclose additional records by or before the end of the twenty-one (21) business day extension. The Complainant argued that these actions prove that this complaint was the catalyst that changed the Custodian’s conduct; thus, he has prevailed. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006).

#### Supplemental Response:

On August 16, 2018, the Custodian responded in writing advising that he completed his search and preparation of the records responsive to the subject OPRA request. The Custodian stated that before he completes the request, the Complainant is required to pay a special service charge “which [the Complainant] consented and agreed to on July 26, 2018.” The Custodian stated that said charge amounted to \$1,536.63 representing the amount of time necessary to research, process, and redact over 3,572 pages of records. On the same day, the Complainant e-mailed the Custodian asking for a copy of the e-mail where he agreed to pay \$1,536.63. The Complainant sent another e-mail attaching two (2) e-mails from July 26, 2018 and noting that neither contained his consent to the imposed special service charge.

On August 22, 2018, Custodian’s Counsel responded in writing reiterating the procedural history of this complaint. Counsel stated that upon receipt of the complaint, the Custodian engaged in a voluntary, good faith effort to disclose responsive records. Counsel stated that the Custodian continued to process the ORPA request during the pendency of the complaint; however, it has “become evident that these efforts are not being met with good faith.” Counsel stated that because of this, the Custodian will await the GRC’s adjudication prior to proceeding with the subject OPRA request.

Counsel stated that the Custodian’s position is based on the Complainant’s dispute of agreeing to the imposed special service charge. Counsel noted that on July 26, 2018, the Custodian twice stated that a special service charge would be required to respond to the OPRA request, and twice the Complainant demanded records be provided to him without addressing the charge. Counsel stated that on August 16, 2018, after the Custodian advised the Complainant of the imposed fee amount, the Complainant “objected and denied consenting to the special service charge.” Counsel noted that although the special service charge issue is not before the GRC, it should take notice of the Custodian’s efforts to comply with the subject OPRA request. Counsel further asserted that the most recent set of communications further support administrative disposition of this complaint.

### Analysis

#### Unripe Cause of Action

OPRA provides that “a custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than *seven business days after receiving the request . . .*” N.J.S.A. 47:1A-5(i) (emphasis added). OPRA

further states that “[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian’s decision by filing . . . a complaint with the Government Records Council . . .” N.J.S.A. 47:1A-6.

In Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-363 (July 2014), the Council found that upon receiving clarification from the complainant regarding an OPRA request, the custodian would have a new period of seven (7) business days to grant access, deny access, seek clarification, or request an extension of time in accordance with N.J.S.A. 47:1A-5(i). Thus, if a complainant verifies a complaint within seven (7) business days after providing clarification to the custodian, the matter would be dismissed as materially defective. See Curcio v. Wall Twp. Police Dep’t (Monmouth), GRC Complaint No. 2018-98 (June 2018) (complaint was unripe for adjudication when complainant verified his complaint on the seventh (7<sup>th</sup>) business day after providing clarification).

In the instant matter, the Custodian received the Complainant’s OPRA request on July 16, 2018. On July 17, 2018, the first (1<sup>st</sup>) business day after receipt, the Custodian responded to the request directing the Complainant to the MMC for Item Nos. 1, 2, and 4, and added that no responsive records exist for Item No. 3. That same day, the Complainant requested reconsideration of the Custodian’s denial, stating that other police departments have provided responsive records without issue. The Complainant also noted that Item No. 3’s request for “Arrest Reports” were listed in the state’s retention schedule. The Custodian replied, requesting a telephone number so he could discuss the matter verbally with the Complainant and gain additional clarification. The Complainant responded by providing the Custodian with relevant portions of the retention schedule as additional clarification.

However, before the Custodian responded, the Complainant verified the instant complaint on July 18, 2018, one (1) business day after providing the Custodian with clarification. Just as with Kohn, GRC 2013-363, the Complainant provided the Custodian with clarification at the Custodian’s request. Thus, the Custodian had seven (7) business days from July 17, 2018 to provide a response. Furthermore, the parties continued to engage in discussions on fulfilling the entirety of the Complainant’s OPRA request, with the Complainant acquiescing to an extension of time to fulfill Item Nos. 1, 2, and 4. Moreover, the requested records are not immediate access records under N.J.S.A. 47:1A-5(e).

Therefore, the matter should be dismissed as materially defective, since the records are not immediate access records and the Complainant verified his complaint before the statutory time period provided for the Custodian to respond had expired. N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6; Kohn, GRC 2013-363; and Curcio, GRC 2018-98. Additionally, the Council declines to address the remaining issues as they are not properly before it.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the matter should be dismissed as materially defective, since the records are not immediate access records and the Complainant verified his complaint before the statutory time period provided for the Custodian to respond had expired. N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6; Kohn v. Twp. of Livingston (Essex),

GRC Complaint No. 2013-363 (July 2014); and Curcio v. Wall Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-98 (June 2018). Additionally, the Council declines to address the remaining issues as they are not properly before it.

Prepared By: Samuel A. Rosado  
Staff Attorney

December 8, 2020