



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 28, 2020 Government Records Council Meeting**

Dwayne L. Gillspie  
Complainant

Complaint No. 2018-208

v.

Paterson Police Department (Passaic)  
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 21, 2020 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005); Perry v. N.J. Dep’t of Corr., GRC Complaint No. 2012-237 (June 2013)

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 28<sup>th</sup> Day of April 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: April 30, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 28, 2020 Council Meeting**

**Dwayne L. Gillispie<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-208**

v.

**Paterson Police Department (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies via U.S. mail of “a copy of the records stating who was the tour commander on June 4<sup>th</sup>, 1997 second shift (who was in charge at the time?).”

**Custodian of Record:** Sonia Gordon

**Request Received by Custodian:** August 13, 2018

**Response Made by Custodian:** August 20, 2018

**GRC Complaint Received:** September 20, 2018

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

**Request and Response:**

On August 9, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 20, 2018, the Custodian responded in writing forwarding a memorandum from Officer Sujeire Bilbao of the Paterson Police Department (“PPD”) stating that copies of responsive records have been destroyed in accordance with New Jersey’s retention schedule.

**Denial of Access Complaint:**

On September 20, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he requested a copy of the logbook page containing the name of the commanding officer who oversaw the police station in 1997. The Complainant contended that he received a response from the Custodian stating that the records have been destroyed.

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

<sup>2</sup> Represented by Harlynn Lack, Esq., Assistant Corporation Counsel (Paterson, 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.

### Statement of Information:

On November 19, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 13, 2018 and forwarded same to Officer Bilbao that day. The Custodian certified that she responded in writing on August 20, 2018, forwarding correspondence from Officer Bilbao stating that any responsive records have been destroyed.

The Custodian also attached a certification from Officer Bilbao to the SOI. Therein, Officer Bilbao certified that upon receiving the Complainant’s request, he contacted Detective David D’Arco in the Chief of Police’s Office to obtain responsive records. Officer Bilbao certified that Detective D’Arco informed him that no responsive records existed as they were over twenty (20) years old. Officer Bilbao also certified that he reviewed PPD’s copy of New Jersey’s Retention Schedule for Municipal Police Departments (“Retention Schedule”). Officer Bilbao certified that according to the Retention Schedule, records entitled “Blotter Sheets/Daily Assignment Sheets” were to be kept for three (3) years and destroyed thereafter.<sup>4</sup> Officer Bilbao certified that he conducted a search for responsive records, but no responsive records were located because the request sought information dated back to 1997. Officer Bilbao also certified that floods caused by Hurricanes Irene and Sandy in 2011 and 2012, respectively, destroyed many records within the PPD.

The Custodian asserted that the GRC should dismiss the matter because no responsive records exist, citing Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). The Custodian asserted that because the request sought records from 1997, any responsive records would have been destroyed in 2000, as per the Retention Schedule.

### 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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer, GRC 2005-49. In Perry v. N.J. Dep’t of Corr., GRC Complaint No. 2012-237 (June 2013), the complainant submitted an OPRA request on June 11, 2012, seeking access to surveillance footage recorded on May 9, 2012. The custodian initially denied access under the New Jersey Department of Corrections’ regulations, but subsequently certified in the SOI that any recorded footage would have been overwritten prior to the date of the OPRA request in accordance with the retention guidelines. The Council thus held that the custodian lawfully denied access to said records, if any, because none

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<sup>4</sup> The Custodian included an excerpt of the Retention Schedule as part of the SOI.

existed. Id. at 4 (citing Pusterhofer, GRC 2005-49). See also Stolte v. N.J. State Police, GRC Complaint Nos. 2015-33 & 2015-89 (November 2015).

A review of the evidence supports a finding consistent with Perry, GRC 2012-237. The Complainant submitted his OPRA request on August 9, 2018, seeking records identifying the “tour commander” in charge on June 4, 1997. However, Officer Bilbao certified that in accordance with the Retention Schedule, any responsive records would have been destroyed after three (3) years, and therefore no records existed. The Custodian also provided an excerpt of the Retention Schedule corroborating Officer Bilbao’s certification. Additionally, the Complainant did not provide evidence to refute the Custodian’s certification.

Therefore, the Custodian borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49; Perry, GRC 2012-237.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005); Perry v. N.J. Dep’t of Corr., GRC Complaint No. 2012-237 (June 2013)

Prepared By: Samuel A. Rosado  
Staff Attorney

April 21, 2020