



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

May 19, 2020 Government Records Council Meeting

Adam C. Miller
Complainant

Complaint No. 2018-234

v.

Township of Howell (Monmouth)
Custodian of Record

At the May 19, 2020 public meeting, the Government Records Council (“Council”) considered the May 12, 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 Custodian did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that she disclosed to the Complainant the only responsive record that Howell Police Department possessed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (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).

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 19th Day of May 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: May 20, 2020

New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 19, 2020 Council Meeting**

**Adam C. Miller¹
Complainant**

GRC Complaint No. 2018-234

v.

**Township of Howell (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S mail or e-mail of “all police records associated with the date March 14, 2009 involving” the Complainant.

Custodian of Record: Penny A. Wollman
Request Received by Custodian: October 1, 2018
Response Made by Custodian: October 2, 2018
GRC Complaint Received: October 16, 2018

Background³

Request and Response:

On October 1, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 2, 2018, the Custodian responded in writing via certified mail disclosing a one-page call sheet.

Denial of Access Complaint:

On October 16, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he previously received from the Howell Police Department (“HPD”) a list of activity involving him. The Complainant noted that one of the events involved a March 14, 2009 traffic stop that the list identified as “Citation Arrest” for “Failure to Have Liability Insurance.” The Complainant contended that he was not arrested on March 14, 2009, let alone for failure to have car insurance. The Complainant stated that he submitted the subject OPRA request to obtain records associated with the traffic stop.

¹ No legal representation listed on record.

² Represented by Joseph A. Clark, Esq. (Howell, 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.

The Complainant contended that the Custodian disclosed one (1) record but failed to disclose any additional records. The Complainant argued that although the prior report identified a citation and arrest, the Custodian failed to disclose at least those two (2) records. The Complainant thus argued that he filed this complaint to compel HPD to disclose records specific to the alleged arrest on March 14, 2009.

Statement of Information:

On November 8, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 1, 2018. The Custodian certified that her search included contacting HPD to perform a search for all records in their possession responsive to the Complainant’s OPRA request. The Custodian affirmed that the search included electronic records maintained by HPD. The Custodian certified that she responded in writing on October 2, 2018 disclosing the one-page call sheet via certified mail. The Custodian certified that she disclosed to the Complainant the only record that HPD possessed regarding the March 14, 2009 traffic stop.

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.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (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 disclosed a one-page call sheet in response to the Complainant’s OPRA request. The Complainant filed the instant complaint contending that there should be additional responsive records in the form of an arrest report and summons. In the SOI, the Custodian certified that the only record in HPD’s possession was the call sheet she disclosed to the Complainant. The Custodian thus affirmed that she disclosed the only record responsive to the Complainant’s OPRA request.

In reviewing the evidence of record here, the GRC is satisfied that the Custodian did not unlawfully deny access to the subject OPRA request. Although the Complainant contended that an arrest report should exist, he denied being arrested on March 14, 2009. Further, the disclosed call sheet does not identify an arrest; thus, it is obvious that the citation was issued in lieu of an

arrest. Further, while it is clear from both the document the Complainant possessed and the call sheet that a citation was issued, the incident occurred over nine (9) years prior to the OPRA request filing. Given this passage of time, it is reasonable to assume that any ancillary records related to the traffic stop including the citation would no longer exist. Thus, the GRC finds that there is no evidence on the record that refutes the Custodian's certification.

Therefore, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that she disclosed to the Complainant the only responsive record that HPD possessed. Danis, GRC 2009-156, *et seq.*; Burns, 2005-68; Holland, 2014-63, *et seq.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that she disclosed to the Complainant the only responsive record that Howell Police Department possessed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (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).

Prepared By: Frank F. Caruso
Executive Director

May 12, 2020