



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 10, 2020 Government Records Council Meeting

Adam C. Miller
Complainant

Complaint No. 2018-239

v.

Township of Lawrence (Mercer)
Custodian of Record

At the November 10, 2020 public meeting, the Government Records Council (“Council”) considered the October 27, 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:

1. Because the Custodian failed to provide a specific lawful basis for redactions made to disclosed records, her response to the Complainant’s OPRA request was insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
2. The Custodian lawfully denied access to Report No. 17-27548-AR responsive to the Complainant’s OPRA request because it is exempt under the “Prevention of Domestic Violence Act of 1991.” N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014). The GRC notes that it does not address the remaining minimally redacted records because the Complainant only identified the Report as at issue here.
3. The Custodian’s response was insufficient because she failed to provide a specific lawful basis for the redactions contained within the disclosed records. N.J.S.A. 47:1A-5(g). Notwithstanding, the Custodian lawfully denied access to the redacted portions of the Report. N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33. Additionally, the evidence of record does not indicate that the Custodian’s violations 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 10th Day of November 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: November 13, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 10, 2020 Council Meeting**

**Adam C. Miller¹
Complainant**

GRC Complaint No. 2018-239

v.

**Township of Lawrence (Mercer)²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S. mail or e-mail of “all police reports and any and all arrest records wherein [the Complainant] was named in any capacity.”

Custodian of Record: Kathleen S. Norcia

Request Received by Custodian: September 24, 2018

Response Made by Custodian: September 27, 2018

GRC Complaint Received: October 16, 2018

Background³

Request and Response:

On September 24, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 27, 2018, the Custodian responded in writing disclosing multiple records totaling eighteen (18) pages with redactions.

Denial of Access Complaint:

On October 16, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that he was unlawfully denied access to the redacted information. The Complainant stated that he sought these records because the allegations made therein resulted in simultaneous proceedings before Mercer County Superior Court. The Complainant asserted that he made multiple attempts to obtain these records to determine the allegations against him. The Complainant stated that this complaint centered on obtaining an unredacted copy of Report No. 17-27548-AR (“Report”), which the Custodian entirely redacted.

¹ No legal representation listed on record.

² Represented by David M. Roskos, Esq., of Eckert, Seamans, Cherin & Mellott, LLC (Lawrence, 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 disclosure of the records with limited redactions would allow him to defend himself in court fairly. The Complainant stated that he ultimately received the Report at issue here without redactions on October 1, 2018 as part of pre-trial discovery.

Statement of Information:

On November 9, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on September 24, 2018. The Custodian certified that her search included asking the Township of Lawrence Police Department (“TLPD”) to review and locate any responsive records. The Custodian certified that she responded in writing on September 27, 2018 disclosing eighteen (18) pages of responsive records with redactions.

The Custodian contended that the request was invalid because it sought “all police reports” and “any and all arrest records” naming the Complainant. N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 309 N.J. Super. 166 (App. Div. 2007); Bent v. Stafford Twp. Police Dep’t, GRC Complaint No. 2004-78 (October 2004). The Custodian argued that notwithstanding, the TLPD “used its best efforts” to find responsive records by reviewing its files and systems. The Custodian averred that the TLPD located records relating to incidents of domestic violence and redacted them in accordance with the “Prevention of Domestic Violence Act of 1991” (“PDVA”). N.J.S.A. 2C:25-17, et seq. The Custodian noted that the TLPD also redacted personal information consistent with the PDVA and OPRA’s privacy interest exemption. N.J.S.A. 47:1A-1.

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). OPRA also requires that, when providing access to redacted records, a custodian shall provide a specific lawful basis for redactions. Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008), 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).

Here, the Custodian disclosed in response to the Complainant’s OPRA request multiple reports with redactions. However, the Custodian did not include any specific lawful basis for those redactions at the time of her response. Thus, the evidence of record supports the Custodian’s response was insufficient in accordance with Paff, GRC 2007-209.

As such, because the Custodian failed to provide a specific lawful basis for redactions made to disclosed records, her response to the Complainant’s OPRA request was insufficient. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209.

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.

OPRA provides that:

The 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) (emphasis added).]

Further, the PDVA provides that “[a]ll records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.” N.J.S.A. 2C:25-33. In VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014), the Council was tasked with determining whether the custodian lawfully denied access to certain records under the PDVA. In concluding that the custodian lawfully denied access to same, the Council confirmed that the records definitively related to a domestic violence incident and noted that the PDVA included a confidentiality clause. Id. at 5.

In the matter before the Council, the Complainant sought access to police and arrest reports naming him. In response, the Custodian disclosed multiple records with redactions regarding incidents in September 2018 between the Complainant and a former girlfriend. This complaint followed, wherein the Complainant focused his complaint on the heavily redacted Report, which he argued he needed without redactions to defend himself in court fairly. In the SOI, the Custodian averred that the redacted information included the girlfriend’s personal information, as well as the incident narratives pursuant to OPRA and PDVA.

Initially, the GRC notes that it will address issue concerning the Report because this record is the only one with which the Complainant takes issue in his Denial of Access Complaint. The Report disclosed was almost entirely redacted, save minor header information at the top of each page. Given the extensive nature of the redactions, the GRC could have opted to perform an *in camera* review here. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005). However, prior to the filing of this complaint, the Complainant received unredacted copies of the records, including the Report, through discovery in his pending court cases. The Complainant attached a complete copy of the unredacted records to his Denial of Access Complaint, thereby allowing the GRC the ability to determine whether the Custodian lawfully denied access to the Report.

A review of the unredacted Report attached to the Denial of Access Complaint supports that same involved a domestic violence incident that resulted in the Complainant's arrest for "harassment/stalking." This was followed by a restraining order and additional calls for service between the individuals. It is thus clear that the Report is a domestic violence record not subject to access under OPRA and the PDVA. N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree, GRC 2014-122.

Accordingly, the Custodian lawfully denied access to the Report responsive to the Complainant's OPRA request because it is exempt under the PDVA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree, GRC 2014-122. The GRC notes that it does not address the remaining minimally redacted records because the Complainant only identified the Report as at issue here.

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 matter before the Council, the Custodian's response was insufficient because she failed to provide a specific lawful basis for the redactions contained within the disclosed records. N.J.S.A. 47:1A-5(g). Notwithstanding, the Custodian lawfully denied access to the redacted portions of the Report. N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33. Additionally, the evidence of record does not indicate that the Custodian's violations 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 Executive Director respectfully recommends the Council find that:

1. Because the Custodian failed to provide a specific lawful basis for redactions made to disclosed records, her response to the Complainant's OPRA request was insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
2. The Custodian lawfully denied access to Report No. 17-27548-AR responsive to the Complainant's OPRA request because it is exempt under the "Prevention of Domestic Violence Act of 1991." N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014). The GRC notes that it does not address the remaining minimally redacted records because the Complainant only identified the Report as at issue here.
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Prepared By: Frank F. Caruso
Executive Director

October 27, 2020