



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

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

Scott Madlinger  
Complainant

Complaint No. 2018-253

v.

Berkeley Township Police Department (Ocean)  
Custodian of Record

At the July 28, 2020 public meeting, the Government Records Council (“Council”) considered the July 21, 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 has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking a current sex offender registry. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 July 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: July 30, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Scott Madlinger<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-253**

v.

**Berkeley Township Police Department (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the current sex offender registry list.

**Custodian of Record:** Sandra Brelsford

**Request Received by Custodian:** October 17, 2018

**Response Made by Custodian:** October 19, 2018

**GRC Complaint Received:** October 25, 2018

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

Request and Response:

On October 17, 2018, the Complainant anonymously submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 18, 2018, Detective Michael O’Connor e-mailed the Custodian advising that per the Ocean County Prosecutor’s Office (“OCPO”), “Megan’s Law” Division, the current sex offender registry should not be “disseminated to anyone other than law enforcement *for law enforcement purposes.*” (emphasis in original). Detective O’Connor further noted that information on “Megan’s Law” offenders can be located on the New Jersey State Police (“NJSP”) website, but not all offenders’ information is published. Detective O’Connor asked the Custodian to forward his e-mail to the Complainant.

On October 19, 2018, Deputy Clerk Karen Stallings responded in writing on behalf of the Custodian forwarding Detective O’Connor’s e-mail to the Complainant. On the same day, the Complainant disputed the response, which prompted the Custodian to obtain an extension to revisit the issue. On October 24, 2018, Custodian’s Counsel e-mailed the Complainant stating that the Township of Berkeley’s (“Township”) Code regarding available lists maintained by the Berkeley

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

<sup>2</sup> Represented by Lauren R. Staiger, Esq., of Rothstein, Mandell, Strohm & Halm, P.A. (Lakewood, 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.

Township Police Department (“BTPD”) referred to sex crimes committed against juveniles and predated “Megan’s Law.” Counsel noted that BTPD informed her that it did not maintain a list specific to the Code reference. Counsel further noted that she suggested to the Township that it revise its Code to avoid confusion going forward. Counsel finally stated that “Megan’s Law” is a State statute providing for a public registry maintained by the NJSP and not the Township. N.J.S.A. 2C:7-13.

On October 25, 2018, the Complainant stated that he intended to file a complaint challenging the denial of access. The Complainant noted that the Township’s response is contrary to the Code “[s]o, obviously there is a list.”

#### Denial of Access Complaint:

On October 25, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the Township unlawfully denied him access to the requested list although Section 4-2 of the Code allows for disclosure.

#### Statement of Information:

On November 20, 2018, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that she received the Complainant’s OPRA request on October 17, 2018. The Custodian certified that she forwarded the request to the Detective Bureau at the BTPD. The Custodian averred that upon speaking with OCPO, Detective O’Connor prepared a response and forwarded it to her on October 18, 2018. The Custodian certified that Ms. Stallings forwarded Detective O’Connor’s e-mail to the Complainant on October 19, 2018.

The Custodian certified that the Township did not maintain a responsive list. The Custodian averred that such a list is available to the public through the NJSP’s Central Registry per N.J.S.A. 2C:7-13.

### 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 v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). In the matter before the Council, the Custodian initially denied access to the Complainant’s OPRA request through Ms. Stallings based on Detective O’Connor’s statement that the requested registry was only available to “law enforcement for law

enforcement purposes.” That statement also included a directive to visit the NJSP’s website to access the sex offender registry. After the Complainant challenged the denial based on the Township’s Code, Custodian’s Counsel advised that same was outdated and that the Township maintained no responsive records. This complaint ensued, wherein the Complainant argued that the Code clearly indicated that a responsive record existed. The Custodian subsequently certified in the SOI that no record existed and that the “Megan’s Law” registry was maintained by the NJSP.

Upon review of the arguments submitted, the GRC is persuaded that the Custodian lawfully denied access to the requested registry. A review of the Code supports Counsel’s contention that it predates the enactment of “Megan’s Law.” The GRC bases this conclusion on the statutory citations included within the Code (N.J.S.A. 2C:14-1, et seq.), which do not refer to “Megan’s Law” at N.J.S.A. 2C:7-1, et seq. Further, “Megan’s Law” contains a concise system for the sex offender registry available to the public through NJSP’s website. Thus, it is logical to conclude that following the passage of “Megan’s Law,” the Township discontinued its practice of maintaining a registry.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking a current sex offender registry. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking a current sex offender registry. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso  
Executive Director

July 21, 2020