



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**

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

Randall and Lynda Burns  
Complainant

Complaint No. 2018-300

v.

Warren County Sheriff's Office  
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:

1. The Custodian has borne her burden of proof that she timely responded to the Complainants two (2) OPRA requests. N.J.S.A. 47:1A-6. As such, no "deemed" denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).
2. The Custodian has borne her burden of proof that no unlawful denial of access to Complainants' October 22, 2018 OPRA request occurred. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that she provided all records that existed. N.J.S.A. 47:1A-6; see Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainants' November 9, 2018 OPRA request seeking an "anti-bribery statement." 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**

**Randall and Lynda Burns<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-300**

v.

**Warren County Sheriff's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

October 22, 2018 OPRA request: Copies of Sheriff James McDonald's oath of office, foreign registration statement, and Fidelity Surety Bond.

November 9, 2018 OPRA request: Copies of Sheriff James McDonald's "anti-bribery statement."

**Custodian of Record:** Heather Godesky

**Request Received by Custodian:** November 19, 2018; November 29, 2018

**Response Made by Custodian:** November 29, 2018; November 30, 2018

**GRC Complaint Received:** November 30, 2018

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

Request and Response:

On October 22, 2018, Complainants submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records and referencing multiple State and Federal statutes.

On November 9, 2018, Complainants submitted an Affidavit referencing OPRA to the Custodian seeking the above-mentioned records. On November 29, 2018, the Custodian responded in writing advising that she received the November 9, 2018 OPRA request on November 19, 2018; thus, she was responding on the sixth (6<sup>th</sup>) business day after receipt of it. The Custodian stated that she was unaware of any "anti-bribery statement" that existed. The Custodian further stated that, notwithstanding any records that may exist, the request was also invalid because it failed to identify a specific government record. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534,

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

<sup>2</sup> Represented by Joseph J. Bell, IV, Esq. of Bell & Shivas, P.C. (Rockaway, 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.

549 (App. Div. 2005); Bent v Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005); Renna v. Cnty. of Union, 407 N.J. Super. 230, 245 (App. Div. 2009). The Custodian thus requested clarification of the OPRA request, noting that Complainants' failure to respond would result in a closure of the November 9, 2018 OPRA request.

#### Denial of Access Complaint:

On November 30, 2018, Complainants filed a Denial of Access Complaint with the Government Records Council ("GRC"). Complainants asserted that they "either hand-delivered . . . and/or sent via certified mail" their October 22, 2018 OPRA request to the Warren County Sheriff's Office ("WCSO") on the same day. Complainants contended that the Custodian failed to respond to the October 22, 2018 OPRA request. Complainants further contended that the Custodian also failed to respond to their November 9, 2018 OPRA request. Complainants argued that the Custodian's failure to respond resulted in a "deemed" denial. Complainants demanded that the Council order disclosure of the requested records.

#### Supplemental Response:

On November 30, 2018, the Custodian responded in writing to Complainants' October 22, 2018 OPRA request. The Custodian noted that she did not receive the subject OPRA request until receipt of the Denial of Access Complaint. The Custodian refuted Complainants' assertion that said request was hand-delivered on October 22, 2018 noting that there was no evidence in the record proving that WCSO received the request via hand-delivery.

The Custodian stated that notwithstanding the non-receipt of Complainants' October 22, 2018 OPRA request until the filing of their Denial of Access Complaint, she decided to respond to it. The Custodian stated that she was granting access to Sheriff McDonald's oath of office<sup>4</sup> and surety bond. The Custodian noted that Complainants' references to State and Federal statutes are misplaced because records created or maintained by the WCSO are not governed by these laws; thus no records exist. The Custodian further stated that the remainder of the subject OPRA request, to the extent that any records may exist, was invalid because it failed to identify specific records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; Gannett, 379 N.J. Super. 230; Renna, 407 N.J. Super. 230. The Custodian noted that it was not even clear exactly which government records Complainants sought; the records provided were based on a good faith attempt to fulfill the subject OPRA request.

On December 4, 2018, Complainants sent a letter to the WCSO confirming receipt of the Custodian's responses and disclosed records. Complainants requested that the WCSO provide contact information for the custodian, as well as a verified statement that WCSO did not receive the October 22, 2018 OPRA request via hand-delivery during the Sheriff Sale of their property. Complainants noted that they attached clarifying information regarding the "anti-bribery statement" sought in the November 9, 2018 OPRA request.

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<sup>4</sup> The GRC notes that OPRA exempts access to "any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office . . . except that the full name, title, and oath date of that person contained therein shall not be deemed confidential." N.J.S.A. 47:1A-1.1.

### Statement of Information:

On April 3, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainants’ OPRA requests on November 19, 2018 and November 29, 2018. The Custodian affirmed that her search involved “thoroughly” reviewing her records, contacting long-time employees and seeking clarification from Complainants regarding their request. The Custodian certified that she also asked the County of Warren to search their records. The Custodian certified that she responded in writing to Complainants’ November 9, 2018 OPRA request on November 29, 2018 denying same because no records existed. The Custodian certified that she also stated that the request was invalid and needed clarification. The Custodian further certified that she responded to the Complainants’ October 22, 2018 OPRA request on November 29, 2018 disclosing copies of Sheriff McDonald’s oath of office and surety bond. The Custodian certified that she also advised that no records existed and the subject OPRA request was invalid.

The Custodian contended that she timely responded to both OPRA requests. The Custodian averred that she attached to the SOI correspondence proving that she timely responded. The Custodian also argued that she properly responded to both OPRA requests. The Custodian certified that she disclosed those records in existence (the oath of office and surety bond) and stated that no additional records exist.

The Custodian additionally contended that the instant complaint was filed in bad faith as part of Complainants’ intent to harass the WCSO for its perceived role in a foreclosure matter.<sup>5</sup> The Custodian further contended that although Complainants certified that their Denial of Access Complaint statements were true, their December 4, 2018 letter acknowledging receipt of her responses proves otherwise. The Custodian averred that she promptly responded to both OPRA requests and disclosed those records that existed. The Custodian further affirmed that any additional responsive records unequivocally did not exist.

On May 13, 2019, Custodian’s Counsel e-mailed the GRC advising that the WCSO sent a copy of the SOI to Complainants via certified mail. Counsel stated that same was returned as “unclaimed.” Counsel asked the GRC to provide any alternate contact information. On May 17, 2019, the GRC responded advising that it had no alternate contact information and noted that Counsel may provide evidence to support the returned mailing. On May 20, 2019, Counsel e-mailed to the GRC copies of the certified mail receipt and returned envelope.

### Analysis

#### Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to

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<sup>5</sup> The Custodian noted that Complainants previously attempted to file a lien against Sheriff McDonald’s personal property in relation to that matter.

N.J.S.A. 47:1A-5(g).<sup>6</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the matter before the Council, Complainants argued that the Custodian failed to respond to their OPRA requests. In the SOI, the Custodian certified that she received the Complainants’ October 22, 2018 OPRA request as part of the Denial of Access Complaint on November 29, 2018 and responded on November 30, 2018. The Custodian further certified that she received the Complainants’ November 9, 2018 OPRA request on November 19, 2018 and responded in writing on November 29, 2018.

The Custodian provided as part of the SOI evidence to support her certifications. Of significant contention here is when the Custodian received the October 22, 2018 OPRA request. The Custodian certified in the SOI that she never received it until receipt of the Denial of Access Complaint. In the Denial of Access Complaint, Complainants stated that they “either hand delivered . . . and/or sent certified mail [the October 22, 2018 OPRA request] so there was validation of receipt of request” Thereafter, Complainants sought a certified statement from the WSCO that they did not receive the request via hand-delivery on October 22, 2018. Notwithstanding this contention, Complainants provided no evidence of their delivery or a certified mail receipt. Based on this, the GRC is persuaded that the evidence supports a finding that no “deemed” denial occurred.

Accordingly, the Custodian has borne her burden of proof that she timely responded to the Complainants two (2) OPRA requests. N.J.S.A. 47:1A-6. As such, no “deemed” denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).

### **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.

#### October 22, 2018 OPRA request

In Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the Council held that a custodian did not unlawfully deny access to a request where they certified, and the record reflected, that they provided all records responsive to a request.

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<sup>6</sup> A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

In the matter before the Council, Complainants contended that the Custodian failed to properly respond to their October 22, 2018 OPRA request. In the SOI, the Custodian provided evidence that she disclosed Sheriff McDonald's oath of office and surety bond to Complainants on November 30, 2018. Further, the Custodian certified in the SOI that she disclosed all records responsive to the subject OPRA request and no others exist. As part of her response to Complainants, the Custodian also explained why the Federal and State statutes included therein did not apply to the WCSO as further support of her position. A review of the evidence here supports the Custodian's position that no unlawful denial of access occurred. Thus, a conclusion consistent with Burns is applicable.

Therefore, the Custodian has borne her burden of proof that no unlawful denial of access to Complainants' October 22, 2018 OPRA request occurred. Specifically, the Custodian certified in the SOI, and the record reflects, that she provided all records that existed. N.J.S.A. 47:1A-6; see Burns, GRC 2005-68.

#### November 9, 2018 OPRA request

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 denied access to Complainants' November 9, 2018 OPRA request stating that, among other reasons, no records existed. The Custodian also certified to this fact in the SOI and no evidence in the record supports that the requested record could reasonably exist in the first place. Thus, upon review of the arguments submitted, the GRC is persuaded that the Custodian lawfully denied access to the requested "anti-bribery statement."

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainants' November 9, 2018 OPRA request seeking an "anti-bribery statement." 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:

1. The Custodian has borne her burden of proof that she timely responded to the Complainants two (2) OPRA requests. N.J.S.A. 47:1A-6. As such, no "deemed" denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).
2. The Custodian has borne her burden of proof that no unlawful denial of access to Complainants' October 22, 2018 OPRA request occurred. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that she provided all records that existed. N.J.S.A. 47:1A-6; see Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainants' November 9, 2018 OPRA request seeking an "anti-bribery statement."

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