



**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**

**January 7, 2020 Government Records Council Meeting**

Jose M. Cortes  
Complainant

Complaint No. 2018-51

v.

Camden County Prosecutor's Office  
Custodian of Record

At the January 7, 2020 public meeting, the Government Records Council ("Council") considered the December 10, 2019 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 his burden of proof that he lawfully denied access to the Complainant's March 5, 2018 OPRA request. 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 7<sup>th</sup> Day of January 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: January 9, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 7, 2020 Council Meeting**

**Jose M. Cortes<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-51**

**v.**

**Camden County Prosecutor's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** In relation to Indictment No. 01578-05-15:

“All records to include but not limited to video recordings, audio recordings and search warrants, as they relate to the April 14, 2014 arrest of Jose Cortes (aka “Pep”) at his residence, 419 Lippincott Avenue, Riverton, New Jersey 08077.”

**Custodian of Record:** William Staas

**Request Received by Custodian:** March 5, 2018

**Response Made by Custodian:** March 8, 2018

**GRC Complaint Received:** March 26, 2018

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

**Request and Response:**

On February 28, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 8, 2018, the Custodian responded in writing, denying access to the Complainant’s request. The Custodian first stated that OPRA does not allow a party to request “every document” or “all” documents held by an agency. Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37, 39 (App. Div. 2005). The Custodian added that the requestor was obligated to specifically describe the document sought and that the agency is not required to speculate about what the requestor seeks. Bart v. Passaic Cnty. Public Hous. Agency, 406 N.J. Super. 445, 451-52 (App. Div. 2009). As to the request for audio and video recordings, the Custodian stated that those are criminal investigatory records and not subject to OPRA. Additionally, the Custodian stated that search warrants are not public records pursuant to N.J. Court Rules, R. 3:5-4.

---

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

<sup>2</sup> Represented by Howard Goldberg, Esq. (Camden, 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.

### Denial of Access Complaint:

On March 26, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was unlawfully denied access to his request.

### Statement of Information:<sup>4</sup>

On August 1, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on March 5, 2018. The Custodian certified that his search included a review of the Camden County Prosecutor’s Office (“CCPO”) electronic record management system for responsive records. The Custodian certified that he responded in writing on March 8, 2018, denying access to the request.

The Custodian argued that the CCPO did not execute a search warrant at the Complainant’s residence. The Custodian thus asserted that there were no responsive records to the request.

### Additional Submissions:

On November 14, 2019, the GRC requested additional information from the Custodian. Specifically, the GRC asked whether the CCPO execute any search warrant related to the indictment identified by the Complainant. The GRC also asked the Custodian to describe the search undertaken which led to the conclusion that the CCPO did not execute a search warrant at the Complainant’s residence.

On November 19, 2019, the Custodian responded to the GRC. In response to the first question, the Custodian certified that a data communication warrant for two (2) telephones was issued by the CCPO. The Custodian then certified that two (2) search warrants were issued, with the first for an address separate from the Complainant’s residence. The second search warrant was for a vehicle registered to the Complainant.

Regarding the second question, the Custodian certified that the Complainant was arrested at his residence under an arrest warrant executed by the United States Marshals. The Custodian certified that no search warrant was obtained by the CCPO. The Custodian certified that this conclusion was ascertained by reading copies of electronically stored records held by the CCPO, which included both the CCPO’s administrative file as well as the United States Marshals’ investigations report.

## **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

---

<sup>4</sup> The Complaint was referred to mediation on April 24, 2018. The Complaint was referred back from mediation on July 23, 2018.

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). Here, the Complainant sought all records, including audio/video recordings and search warrants, relating to the Complainant’s arrest at his residence on April 14, 2014. The Custodian initially responded by stating that a request for “all” records was invalid. The Custodian also stated that any audio/video recordings of the incident would be exempt from disclosure as criminal investigatory records. The Custodian also stated search warrants are not public records under R. 3:5-4.

However, in the Custodian’s SOI, he certified that no responsive records exist, as the CCPO did not execute a search warrant at the Complainant’s residence. In response to the GRC’s clarification request, the Custodian certified that the United States Marshals was the agency who arrested the Complainant at his residence on April 14, 2014. The Custodian certified that he reviewed both the CCPO file as well as the United States Marshals’ investigations file to conclude that no search warrant was executed, and that no responsive records exist. Additionally, the Complainant provided no evidence to refute the Custodian’s certification.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s March 5, 2018 OPRA request. 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 his burden of proof that he lawfully denied access to the Complainant’s March 5, 2018 OPRA request. 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: Samuel A. Rosado  
Staff Attorney

December 10, 2019