



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**

**February 26, 2020 Government Records Council Meeting**

Scott Madlinger  
Complainant

Complaint No. 2018-73

v.

Hazlet Township (Monmouth)  
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 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:

1. Because the Custodian failed to provide a specific lawful basis for redactions made to the arrest reports, the Custodian’s response to the Complainant’s April 23, 2018 OPRA request is 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); Schwarz v. N.J. Dep’t of Human Servs., GRC Complaint No. 2004-60 (February 2005); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).
2. The Custodian lawfully denied access to the Complainant’s April 3, 2018 OPRA request Item No. 3 seeking an investigative report. N.J.S.A. 47:1A-6. The report satisfies the two-prong test to be exempt under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janezko v. N.J. Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Cheatham v. Borough of Fanwood Police Dep’t, GRC Complaint No. 2013-262 (March 2014); Nance v. Scotch Plains Twp. Police Dep’t (Atlantic), GRC Complaint No. 2003-125 (January 2005).
3. Notwithstanding his insufficient response, the Custodian lawfully redacted the officers’ narratives accompanying the responsive arrest reports provided to the Complainant. N.J.S.A. 47:1A-6. Such information is exempt from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janezko v. N.J. Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Cheatham v. Borough of Fanwood Police Dep’t, GRC Complaint No. 2013-262 (March 2014); Hwang v. Bergen Cnty. Prosecutor’s Office, GRC Complaint No. 2011-348 (January 2013).

4. The Custodian unlawfully redacted the arrestees' occupations contained within the provided arrest reports, since such information is required to be disclosed under N.J.S.A. 47:1A-3(b). N.J.S.A. 47:1A-6. However, the Council declines to order disclosure since the evidence in the record indicates that the Custodian provided revised arrest reports containing the occupations on June 4, 2018.
5. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's April 3, 2018 OPRA request Item No. 2 seeking complaints received regarding New Look Spa, because the Custodian certified that no responsive records exist, and the record reflects the same. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
6. The Custodian provided an insufficient response to the Complainant's April 3, 2018 OPRA request pursuant to N.J.S.A. 47:1A-5(g), and unlawfully denied access to information required to be disclosed under N.J.S.A. 47:1A-3(b). However, the Custodian lawfully denied access to the remainder of the Complainant's request. Further, the Custodian cured the unlawful denial by disclosing revised arrest records as part of the SOI on June 4, 2018. Additionally, the evidence of record does not indicate that the Custodian's violation 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 26<sup>th</sup> Day of February 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: March 3, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 26, 2020 Council Meeting**

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

**GRC Complaint No. 2018-73**

**v.**

**Hazlet Township (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

1. All arrest reports for activities happening at New Look Spa, between 01/01/2018 and 03/30/2018.
2. All complaints received about New Look Spa between 01/01/2017 and 03/30/2018.
3. Investigative report of the 03/15/2018 raid of New Look Spa.

**Custodian of Record:** Lt. Scott Mura

**Request Received by Custodian:** April 3, 2018

**Response Made by Custodian:** April 12, 2018

**GRC Complaint Received:** April 23, 2018

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

**Request and Response:**

On March 30, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 12, 2018, the Custodian responded in writing granting in part and denying in part access to responsive records.

For Item No. 1, the Custodian provided four (4) arrest reports containing redactions. For Item No. 2, the Custodian stated that no responsive records exist. For Item No. 3, the Custodian stated that the request was denied due to those records constituting ongoing criminal investigatory records.

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

<sup>2</sup> Represented by James H. Gorman, Esq., of James H. Gorman, Attorney at Law (Shrewsbury, 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 April 23, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that while he received responsive records on April 12, 2018, the narrative of each arrest report was redacted. Additionally, the Complainant asserted that while the Custodian claimed that no responsive records exist for Item No. 2, news reports stated that “they received numerous complaints” regarding New Look Spa.

### Statement of Information:

On June 4, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 3, 2018. The Custodian certified that his search included review of the records management system. The Custodian certified that he responded in writing on April 12, 2018, providing four (4) arrest reports totaling thirteen (13) pages.

The Custodian maintained that he properly responded to the Complainant’s OPRA request. Regarding the arrest reports, the Custodian asserted that he properly redacted the personal identifying information (phone numbers, dates of birth, driver’s license numbers) pursuant to the balancing test under N.J.S.A. 47:1A-1. The Custodian contended that the names of family members as well as employment/school information was redacted on this basis. The Custodian argued that family members, schools, and employers should not be subjected to public disclosure or embarrassment resulting from the acts of a family member, student, or employee.

The Custodian also noted that the occupation of the arrested persons was redacted, but according to N.J.S.A. 47:1A-3(b), the occupation of a defendant is to be released if an arrest has been made. The Custodian asserted that revised copies of the arrest reports have been included with SOI with the occupations unredacted. As to the arrest narratives, the Custodian maintained that they constituted criminal investigatory records under N.J.S.A. 47:1A-1.1 and were exempt from disclosure.

Regarding the investigation report, the Custodian asserted that it comprised four (4) incident reports totaling twenty-one (21) pages and was withheld from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.

### Additional Submissions:

On January 10, 2020, the GRC sought additional information from the Custodian. Specifically, the GRC asked:

- Were any records located in response to Item No. 2 of the Complainant’s request seeking complaints pertaining to New Look Spa between January 1, 2017 and March 30, 2018? Please describe the search undertaken to locate such records.

On January 15, 2020, the Custodian responded to the GRC's request. The Custodian certified that complaints regarding the New Look Spa were received through an anonymous tip line, but that copies of the tip line recordings are not maintained. The Custodian also certified that the tip line messages were not transcribed. The Custodian certified that the anonymous tip line complaint is referenced in the criminal investigative reports but were not provided as they constituted criminal investigatory records under N.J.S.A. 47:1A-1.1.

## 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). Thus, OPRA requires that, when providing access to redacted records, a custodian shall provide a specific lawful basis for redactions.

In Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008), the custodian responded in a timely manner providing redacted records to the complainant; however, the custodian failed to provide a specific legal basis for said redactions. The Council held that “[t]he Custodian’s response was legally insufficient under OPRA because he failed to provide a written response setting forth a detailed and lawful basis for each redaction ...” Id. at 4. The Council further held that “the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and has not borne his burden of proving the denial of access to the redacted portions was authorized by law. . .” Id. at 5. See Schwarz v. N.J. Dep’t of Human Servs., GRC Complaint No. 2004-60 (February 2005) (setting forth the proposition that specific citations to the law that allows a denial of access are required at the time of the denial); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010) (noting that N.J.S.A. 47:1A-5(g) requires a custodian of record to indicate the specific basis for noncompliance).

In this matter, the Custodian failed to provide a specific lawful basis for the redactions contained in the arrest reports upon providing access to same. It was not until the submission of the SOI that the Custodian argued that the redactions were based on personal privacy and the criminal investigatory records exemption found in N.J.S.A. 47:1A-1.1.

Therefore, because the Custodian failed to provide a specific lawful basis for redactions made to the arrest reports, the Custodian’s response to the Complainant’s April 23, 2018 OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209; Schwarz, GRC 2004-60; Renna, GRC 2008-86.

### 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 defines a criminal investigatory record as “a record which is not required by law to be made, maintained, or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1. Therefore, for a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017), rev’ing in part N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015). In the appeal, the Court affirmed that OPRA’s criminal investigatory records exemption applies to police records which originate from a criminal investigation. However, the court stated that “to qualify for the exception — and be exempt from disclosure — a record (1) must not be ‘required by law to be made,’ and (2) must ‘pertain[ ] to a criminal investigation.’ N.J.S.A. 47:1A-1.1.” Id. at 564.

The Court made it clear that if the first prong cannot be met because such a record is required by law to be made, then that record “cannot be exempt from disclosure under OPRA’s criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.” Id. at 365. Although the Court agreed with the Appellate Division’s analysis in O’Shea, 410 N.J. Super. at 382, that a clear statement of policy to police officers from the State Attorney General has “the force of law for police entities,” it refused to conclude that records retention schedules adopted by the State Records Committee meet OPRA’s “required by law” standard.

The Court also noted that even if a record is not required by law to be made, it must still be found to pertain to a criminal investigation. The Court reiterated the Appellate Division’s observation that “some police records relate to an officer’s community-caretaking function; others to the investigation of a crime.” Id. at 569 (citing N. Jersey Media Grp., Inc., 441 N.J. Super. at 105).<sup>4</sup> Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a “case-by-case analysis.” However, the Court pointed out that police records that stem from “an investigation into *actual or potential* violations of criminal law,” such as “detailed investigative reports and witness statements,” will satisfy the second prong of OPRA’s criminal investigatory records exemption. Id. (emphasis added).

The Council has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. In Janeczko v. N.J. Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), the Council held that “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.”<sup>5</sup> Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete.”

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<sup>4</sup>This is instructive for police agencies because it underscores the fact that their role in society is multi-faceted; hence, not all of their duties are focused upon investigation of criminal activity. And only those records created in their capacity as criminal investigators are subject to OPRA’s criminal investigatory records exemption.

<sup>5</sup>The GRC’s ruling was affirmed in an unpublished opinion of the Appellate Division.

### Investigative Report (Item No. 3)

The GRC has previously held that police incident reports were exempt from disclosure where they met the two (2) prong test required to be a criminal investigatory record under OPRA. See Cheatham v. Borough of Fanwood Police Dep't, GRC Complaint No. 2013-262 (March 2014) (holding that incident reports and related records that summarize information contained in such reports are exempt from disclosure under OPRA as criminal investigatory records). See also Nance v. Scotch Plains Twp. Police Dep't (Atlantic), GRC Complaint No. 2003-125 (January 2005). However, the Council has found these records can be disclosable where they did not meet the criminal investigatory test. See De La Cruz, Esq. v. City of Union City (Hudson), GRC Complaint No. 2015-14 (May 2017) (holding that certain incident reports were disclosable where they were not criminal investigatory, medical, or otherwise exempt under State regulations). In the instant complaint, the GRC must determine whether the responsive records meet the N. Jersey Media Grp. test and act accordingly based on the result.

Here, in response to Item No. 3, the Custodian withheld an investigative report comprising (4) incident reports totaling twenty-one (21) pages of records. The Custodian certified that the report is related to the four (4) arrest reports that were provided to the Complainant.

In applying the test under N. Jersey Media Grp., 221 N.J. 541, the GRC is satisfied that the Custodian lawfully denied access to the investigative report. Since the arrest reports were provided as part of the SOI, the evidence in the record indicates that the investigative report pertained to a criminal investigation under N.J.S.A. 2C:34-1. Further, there is no evidence in the record indicating that such reports are required to be made.

Accordingly, the Custodian lawfully denied access to the Complainant's April 3, 2018 OPRA request Item No. 3 seeking an investigative report. N.J.S.A. 47:1A-6. The report satisfies the two-prong test to be exempt under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. 229 N.J. 541; Janeczko, GRC 2002-79, *et seq.*; Cheatham, GRC 2013-262; Nance, GRC 2003-125.

### Arrest Report Redactions (Item No. 1)

Regarding arrest reports, the Council has held that such reports are disclosable, with redactions for information otherwise exempt under OPRA, since they contain information required to be disclosed under N.J.S.A. 47:1A-3(b). See Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008). In contrast, the Council has held that incident reports containing police officer accounts are exempt from disclosure as criminal investigatory records. See Cheatham, GRC 2013-262.

In Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013), the complainant sought "all reports by law enforcement officers . . . regarding the arrest and incident involving Marcello Castillo and Woojin Hwang." The custodian denied access to the "narrative" police reports responsive to the request but granted access to the arrest reports as they only contained the "basic factual data related to an arrest." Id. at 1-2. The Council held that the

custodian lawfully denied access to those narrative police reports as constituting criminal investigatory records. Id. at 9.

In the instant matter, the Complainant objected to the redactions made to the Officers' narratives accompanying the provided arrest reports responsive to Item No. 1. The Custodian asserted that such information fell under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.

Upon review, the GRC is satisfied that the Custodian largely met the obligations set forth under Morgano, GRC 2007-156. A police officer's narrative is not included as information required to be disclosed under N.J.S.A. 47:1A-3(b), like the police report "narratives" withheld in Hwang, GRC 2011-348. Furthermore, there is no evidence in the record to show that officers' narratives are required by law to be made. Additionally, since these narratives are reports made in connection with arrests under N.J.S.A. 2C:34-1, it is evident they pertain to criminal investigations. Therefore, such information qualifies under the criminal investigatory records exemption.

Therefore, notwithstanding his insufficient response, the Custodian lawfully redacted the officers' narratives accompanying the responsive arrest reports provided to the Complainant. N.J.S.A. 47:1A-6. Such information is exempt from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., 229 N.J. 54; Janeczko, GRC 2002-79, *et seq.*; Cheatham, GRC 2013-262; Hwang, GRC 2011-348.

#### Arrestees' Occupations

OPRA provides that:

Notwithstanding the provisions of [OPRA], the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

...

if an arrest has been made, information as to the defendant's name, age, residence, *occupation*, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court Rule[.]

[N.J.S.A. 47:1A-3(b) (emphasis added).]

While the Custodian left unredacted most of the information required to be disclosed under N.J.S.A. 47:1A-3(b), he noted in the SOI that he erroneously redacted the arrestees' occupations. Such information is required to be provided when an arrest has occurred. See N.J.S.A. 47:1A-3(b). The Custodian stated that he provided revised arrest reports with the occupations unredacted on June 4, 2018, as part of the SOI.



Therefore, the Custodian unlawfully redacted the arrestees' occupations contained within the provided arrest reports, since such information is required to be disclosed under N.J.S.A. 47:1A-3(b). N.J.S.A. 47:1A-6. However, the Council declines to order disclosure since the evidence in the record indicates that the Custodian provided revised arrest reports containing the occupations on June 4, 2018.<sup>6</sup>

### Complaints (Item No. 2)

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's OPRA request Item No. 2 sought in part "complaints" received regarding New Look Spa during a specific time. On April 12, 2018, the Custodian responded that no responsive records exist for that request item. However, the Custodian did not reference Item No. 2 in his SOI. In response to the GRC's request for additional information, the Custodian certified that complaints received regarding New Look Spa were via an anonymous tip line. The Custodian certified that recordings of said tips were not kept, nor transcripts made, and were only referenced in the investigative reports. Additionally, the Complainant provided no evidence to refute the Custodian's certification.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's April 3, 2018 OPRA request Item No. 2 seeking complaints received regarding New Look Spa, because the Custodian certified that no responsive records exist, and the record reflects the same. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### 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.

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<sup>6</sup> The GRC does not address the Custodian's redactions made to the arrest reports on the basis of personal privacy interests because the Complainant did not raise the issue at any point during the pendency of this complaint.

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)).

The Custodian provided an insufficient response to the Complainant's April 3, 2018 OPRA request pursuant to N.J.S.A. 47:1A-5(g), and unlawfully denied access to information required to be disclosed under N.J.S.A. 47:1A-3(b). However, the Custodian lawfully denied access to the remainder of the Complainant's request. Further, the Custodian cured the unlawful denial by disclosing revised arrest records as part of the SOI on June 4, 2018. Additionally, the evidence of record does not indicate that the Custodian's violation 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 the arrest reports, the Custodian's response to the Complainant's April 23, 2018 OPRA request is 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); Schwarz v. N.J. Dep't of Human Servs., GRC Complaint No. 2004-60 (February 2005); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).
2. The Custodian lawfully denied access to the Complainant's April 3, 2018 OPRA request Item No. 3 seeking an investigative report. N.J.S.A. 47:1A-6. The report satisfies the two-prong test to be exempt under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Cheatham v. Borough of Fanwood Police Dep't, GRC Complaint No. 2013-262 (March 2014); Nance v. Scotch Plains Twp. Police Dep't (Atlantic), GRC Complaint No. 2003-125 (January 2005).
3. Notwithstanding his insufficient response, the Custodian lawfully redacted the officers' narratives accompanying the responsive arrest reports provided to the Complainant. N.J.S.A. 47:1A-6. Such information is exempt from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Cheatham v. Borough of Fanwood Police Dep't, GRC Complaint No. 2013-262 (March 2014); Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013).
4. The Custodian unlawfully redacted the arrestees' occupations contained within the provided arrest reports, since such information is required to be disclosed under

N.J.S.A. 47:1A-3(b). N.J.S.A. 47:1A-6. However, the Council declines to order disclosure since the evidence in the record indicates that the Custodian provided revised arrest reports containing the occupations on June 4, 2018.

5. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's April 3, 2018 OPRA request Item No. 2 seeking complaints received regarding New Look Spa, because the Custodian certified that no responsive records exist, and the record reflects the same. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
6. The Custodian provided an insufficient response to the Complainant's April 3, 2018 OPRA request pursuant to N.J.S.A. 47:1A-5(g), and unlawfully denied access to information required to be disclosed under N.J.S.A. 47:1A-3(b). However, the Custodian lawfully denied access to the remainder of the Complainant's request. Further, the Custodian cured the unlawful denial by disclosing revised arrest records as part of the SOI on June 4, 2018. Additionally, the evidence of record does not indicate that the Custodian's violation 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.

Prepared By: Samuel A. Rosado  
Staff Attorney

January 21, 2020<sup>7</sup>

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<sup>7</sup> This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to a lack of quorum.