INTERIM ORDER
June 28, 2022 Government Records Council Meeting

Kevin Alexander
Complainant

v.

Somerset County Board of Chosen Freeholders
Custodian of Record

At the June 28, 2022 public meeting, the Government Records Council (“Council”) considered the June 21, 2022 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 not borne her burden of proving that she lawfully denied access to the Complainant’s valid September 1, 2020 OPRA request for the “full name” and “qualifications,” “certification,” and “certificates” of the law librarian supervisor for the Somerset County Jail. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, et seq. (Interim Order dated June 29, 2010); Mella v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-217 (August 2018); Wagner v. Twp. of Montclair Police Dep’t (Essex), GRC Complaint No. 2013-222 (Interim Order dated March 25, 2014). The Custodian shall identify, locate, and disclose the requested personnel information to the Complainant. N.J.S.A. 47:1A-10. If no responsive information could be located, the Custodian shall certify to same.

2. The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver1 certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,2 to the Executive Director.3

1 The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.
2 “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”
3 Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been made available to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.
3. The Custodian lawfully denied access to the Complainant’s September 7, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant explicitly requested his grievance forms, the responses thereto, and the responses’ author, which are records expressly exempt under OPRA. N.J.S.A. 47:1A-1.1; Yannone v. N.J. Dep’t of Corr., GRC Complaint No. 2016-73 (October 2017).

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Interim Order Rendered by the
Government Records Council
On The 28th Day of June 2022

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: June 29, 2022
STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
June 28, 2022 Council Meeting

Kevin Alexander¹
Complainant

v.

Somerset County Board of Chosen Freeholders²
Custodial Agency

Records Relevant to Complaint: Copies via U.S. mail of:

September 1, 2020 OPRA Request:
1. The full name of the law librarian supervisor for the Somerset County Jail.
2. The law library supervisor’s certificates, certification, and qualifications.

September 7, 2020 OPRA Request:
1. Both of the Complainant’s grievance forms.
2. The responses to the grievance forms.
3. The full name of the Captain that responded to the grievance forms.

Custodian of Record: Kelly Mager
Request Received by Custodian: September 15, 2020
Response Made by Custodian: September 21, 2020
GRC Complaint Received: October 13, 2020

Background³

Request and Response:

On September 1, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 7, 2020, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records.

On September 21, 2020, Andrea Clegg responded in writing on the Custodian’s behalf to the Complainant’s September 1, 2020 OPRA request stating that item No. 1 sought information outside the scope of OPRA. Ms. Clegg stated that responding to the request would require her to

¹ No legal representation listed on record.
² Represented by Bradley D. Tishman, Esq. of Cleary Giacobbe Alfieri & Jacobs, LLC (Oakland, 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.

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Also on September 21, 2020, Ms. Clegg responded in writing on the Custodian’s behalf to the Complainant’s September 7, 2020 OPRA request stating that the entirety of the request was exempt from disclosure as “information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position.” N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On October 13, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant initially asserted that the Custodian did not respond to either request, but nevertheless provided the Custodian’s responses as attached. Notwithstanding, the Complainant argued that the requested information was “public domain” or was part of “public records.” The Complainant added that the denial of access was a “stall tactic” by Ms. Clegg not providing the identity of the law librarian supervisor.

Statement of Information:

On November 17, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA requests on September 15, 2020. The Custodian certified that Ms. Clegg responded to both requests in writing on September 21, 2020, denying access.

The Custodian maintained the same arguments in the SOI as stated to the Complainant in the September 21, 2020 responses.
Analysis

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.

[MAG, 375 N.J. Super. at 546 (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt... In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Regarding requests seeking information or asking questions, there are instances in OPRA specifically identifies pieces of information as a “government record” under OPRA. By way of example, in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, et seq. (Interim Order dated June 29, 2010), the Council determined that “name, position, salary, payroll record and length of service” was information specifically considered to be a “government record” under N.J.S.A. 47:1A-10. The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5.


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OPRA also provides that:

[Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

[N.J.S.A. 47:1A-10 (emphasis added).]

In Mella v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-217 (August 2018), the complainant sought the “credentials and training certificates” for agency personnel. The Council held that that the provided certificates which confirmed the completion of training for those personnel were sufficient in response to the request. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004), the complainant sought the “training records of Officer Tuttle.” Id. The Council found that “training records relating to a police officer’s public employment as a law enforcement official would be subject to public access” to the extent that the records contained information that disclosed conformity with the qualifications required for government employment. Merino, GRC 2003-110 (citing N.J.S.A. 47:1A-10).

Additionally, in Wagner v. Twp. of Montclair Police Dep’t (Essex), GRC Complaint No. 2013-222 (Interim Order dated March 25, 2014), the complainant sought the “personnel information” of certain police officers. Although the Custodian provided the names, positions, dates of hire, and salaries of the police officers, they argued that the request for the “experiential, educational, or medical qualifications required for employment” was overly broad. The Council disagreed, finding that the requested information was considered to be specific government records under N.J.S.A. 47:1A-10, and that the information could have been readily identified, located, and produced from a routine search of files given that the Custodian was able to provide a portion of the personnel information.

In the instant matter, the Complainant’s September 1, 2020 OPRA request sought the “full name” of the law librarian supervisor for Somerset County Jail, and the “certificates”, “certification”, and “qualifications” of that supervisor. The Custodian denied access to the September 1, 2020 OPRA request stating that the request sought information or were overly broad.

Upon review, the evidence of record demonstrates that the Custodian improperly determined the request as invalid. First, the Complainant sought the full name of a public employee, and in accordance with Danis, GRC 2009-156 such information constitutes a “government record” under N.J.S.A. 47:1A-10. Furthermore, the Complainant sought the “qualifications”, “certification”, and “certificates” of that public employee. Like the request in Mella, GRC 2016-217, the Complainant seeks information pertaining to the employee’s appropriate skills and training required for their position. Upon identifying the law librarian supervisor, the Custodian would be able to conduct a search for said information without the need to conduct research. See also Wagner, GRC 2013-222.

Therefore, the Custodian has not borne her burden of proving that she lawfully denied access to the Complainant’s valid September 1, 2020 OPRA request for the “full name” and
“qualifications,” “certification,” and “certificates” of the law librarian supervisor for the Somerset County Jail. N.J.S.A. 47:1A-6; Danis, GRC 2009-156; Mella, GRC 2016-217; Wagner, GRC 2013-222. The Custodian shall identify, locate, and disclose the requested personnel information to the Complainant. N.J.S.A. 47:1A-10. If no responsive information could be located, the Custodian shall certify to same.

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. 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 also provides that:

A government record shall not include . . . information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer [or] with any grievance filed by or against an individual . . . .

[N.J.S.A. 47:1A-1.1]

In Yannone v. N.J. Dep’t of Corr., GRC Complaint No. 2016-73 (October 2017), the complainant sought a recorded interview of an inmate pertaining to allegations of misconduct against a DOC employee. The Custodian denied access under the grievance exemption. The GRC found that because the recorded interview was borne from allegations of misconduct by an inmate against an employee, the record was exempt from disclosure under OPRA. The GRC also noted that DOC certified that the record pertained to a grievance filing. See also Rodgers v. N.J. Dep’t of Corr., GRC Complaint No. 2007-311 (June 2009).

Here, the Complainant’s September 7, 2020 OPRA request sought access to his grievance forms, their responses, and the identity of the Captain who authored the responses. The Custodian denied access to both request items under OPRA’s grievance exemption. N.J.S.A. 47:1A-1.1.

Upon review, the GRC is satisfied that the records were properly exempt under OPRA, given the factual similarities here and those in Yannone, GRC 2016-73. Specifically, the Complainant explicitly requested grievance forms and any responses to same, which would comprise records generated in connection with those grievances. Furthermore, the Complainant’s request for the identity of the author of his grievances’ response is intrinsically tied to information generated in connection with a grievance filing.

Accordingly, the Custodian lawfully denied access to the Complainant’s September 7, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant explicitly requested his grievance forms, the responses thereto, and the responses’ author, which are records expressly exempt under OPRA. N.J.S.A. 47:1A-1.1; Yannone, GRC 2016-73.
Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

1. The Custodian has not borne her burden of proving that she lawfully denied access to the Complainant’s valid September 1, 2020 OPRA request for the “full name” and “qualifications,” “certification,” and “certificates” of the law librarian supervisor for the Somerset County Jail. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, et seq. (Interim Order dated June 29, 2010); Mella v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-217 (August 2018); Wagner v. Twp. of Montclair Police Dep’t (Essex), GRC Complaint No. 2013-222 (Interim Order dated March 25, 2014). The Custodian shall identify, locate, and disclose the requested personnel information to the Complainant. N.J.S.A. 47:1A-10. If no responsive information could be located, the Custodian shall certify to same.

2. The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director.

3. The Custodian lawfully denied access to the Complainant’s September 7, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant explicitly requested his grievance forms, the responses thereto, and the responses’ author, which are records expressly exempt under OPRA. N.J.S.A. 47:1A-1.1; Yannone v. N.J. Dep’t of Corr., GRC Complaint No. 2016-73 (October 2017).

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

June 21, 2022

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6 “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

7 Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been made available to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.