



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 26, 2022 Government Records Council Meeting

Kevin Alexander
Complainant

Complaint No. 2020-211

v.

Somerset County Board of Chosen Freeholders
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 2022 Supplemental 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 complied with the Council’s June 28, 2022 Interim Order because she responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the Complainant’s September 1, 2020 OPRA request, she lawfully denied access to the Complainant’s September 7, 2020 OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian complied with the Council’s June 28, 2022 Interim Order by providing the Complainant with response records. 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 26th Day of July 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: July 28, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 26, 2022 Council Meeting**

**Kevin Alexander¹
Complainant**

GRC Complaint No. 2020-211

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

Background

June 28, 2022 Council Meeting:

At its June 28, 2022 public meeting, the 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, found 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.

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq. of Cleary Jacobbe Alfieri & Jacobs, LLC (Oakland, NJ).

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 deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.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.

Procedural History:

On June 29, 2022, the Council distributed its Interim Order to all parties. On July 6, 2022, Custodian's Counsel requested an extension of time to respond to the Interim Order. That same day the GRC replied to Counsel granting an extension until July 14, 2022 to submit a response.

On July 13, 2022, Counsel responded to the Council's Interim Order, providing a certification from the Custodian. The Custodian certified to the full name of the law librarian supervisor at Somerset County Jail and that the attached memorandum was the only record responsive to the request item seeking the law librarian supervisor's "qualifications". The Custodian further certified that no responsive records exist pertaining to the portion of the request seeking "certification" or "certificate."

The Custodian also submitted certified confirmation of compliance to the Executive Director, with a copy of the response delivered to the Complainant via First Class Mail.

³ 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.

⁴ "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."

⁵ 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.

Analysis

Compliance

At its June 28, 2022 meeting, the Council ordered the Custodian to locate and provide to the Complainant the requested personnel information. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On June 29, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on July 7, 2022.

On July 6, 2022, the fourth (4th) business day after receipt of the Council's Order, Custodian's Counsel requested an extension of time to respond which the GRC granted until July 14, 2022. On July 13, 2022, the Custodian responded to the Council's Order, providing responsive records, and submitting certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's June 28, 2022 Interim Order because she responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

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. 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)).

Although the Custodian unlawfully denied access to the Complainant's September 1, 2020 OPRA request, she lawfully denied access to the Complainant's September 7, 2020 OPRA request.

N.J.S.A. 47:1A-6. Additionally, the Custodian complied with the Council's June 28, 2022 Interim Order by providing the Complainant with response records. 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. The Custodian complied with the Council's June 28, 2022 Interim Order because she responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

2. Although the Custodian unlawfully denied access to the Complainant's September 1, 2020 OPRA request, she lawfully denied access to the Complainant's September 7, 2020 OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian complied with the Council's June 28, 2022 Interim Order by providing the Complainant with response records. 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

July 19, 2022



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

INTERIM ORDER

June 28, 2022 Government Records Council Meeting

Kevin Alexander
Complainant

Complaint No. 2020-211

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**

GRC Complaint No. 2020-211

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 Jacobbe 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.

“analyze, collate, and compile” data. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); and Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015).

Regarding item No. 2, Ms. Clegg asserted that the request was overly broad and failed to specifically identify government records. MAG, 375 N.J. Super. at 549; N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Spectraserv, Inc. v. Middlesex Cty. Utilities Auth., 416 N.J. Super. 565, 576 (App. Div. 2010); Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 237. Ms. Clegg stated that the request item was “deficient” because it required her to conduct research to fulfill. See Parreott v. Asbury Park Sch. Dist., GRC Complaint Nos. 2016-20 & 2016-39 (September 2017). Ms. Clegg also noted that the request was invalid since it lacked any date limitation. Wares v. Passaic Cty. Prosecutor’s Office, GRC Complaint No. 2014-330 (June 2015); Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).

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;⁴ N.J. Builders Ass’n, 390 N.J. Super. at 180; 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, title, 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.

⁴ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

OPRA also provides that:

[D]ata 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-1.1. 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 deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷**
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

⁵ 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.

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.