



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

Lt. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2023 Government Records Council Meeting

Kevin Jackson
Complainant

Complaint No. 2021-179

v.

NJ Office of the Attorney General
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 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 her burden of proof that she lawfully denied access to the Complainant’s 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 31st Day of January 2023

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: February 6, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2023 Council Meeting**

**Kevin Jackson¹
Complainant**

GRC Complaint No. 2021-179

v.

**N.J. Office of the Attorney General²
Custodial Agency**

Records Relevant to Complaint: Hardcopy via U.S. mail of the “report surrounding [the] New Jersey State Police [(“NJSP”)]” recently released by the Attorney General on or about July 10, 2021 addressing arrests, traffic stops, and other actions by race.

Custodian of Record: Octavia Baker

Request Received by Custodian: July 16, 2021

Response Made by Custodian: July 20, 2021

GRC Complaint Received: August 3, 2022

Background³

Request and Response:

On July 10, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 20, 2021 the Custodian responded in writing stating that the NJSP Traffic Stop Data Dashboard (“Dashboard”), comprised of data on traffic stops and accessible online, is not in report form. The Custodian directed the Complainant to the specific website address to view the Dashboard and advised that she was closing the subject OPRA request.

Denial of Access Complaint:

On August 3, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied him access to the subject OPRA request because he had no way of accessing the Dashboard. The Complainant contended that the Custodian’s referral to the Dashboard, as opposed to

¹ No legal representation listed on record.

² Represented by Deputy Attorney General (“DAG”) Michael Vomacka. Previously represented by DAG Suzanne Davies.

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.

disclosing paper copies, amounted to a “discriminat[ory]” denial of access. The Complainant further argued that he believed “accessability [sic] entails also making access [to the Dashboard] on/or in paper form.” The Complainant further argued that the denial of access should be overturned because the Attorney General ordered release of the Dashboard to the public, supervises NJSP, and because the information contained therein “legally pertains to [him].”

Statement of Information:

On September 30, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 16, 2021. The Custodian affirmed that she confirmed with her office that no actual “report” existed and that the Complainant must have sought the Dashboard data. The Custodian certified that she responded in writing on July 20, 2021 denying the request for the forgoing reasons and directing the Complainant to the Dashboard.

The Custodian stated that in July 2021, the Attorney General launched the Dashboard, which enabled the public to access to data on more than six million traffic stops over a ten-year period. The Custodian averred that the Dashboard is composed of multiple datasets with various information and is designed for access by either computer or mobile device. The Custodian noted that the Dashboard also provides users access instructions, notes on the data, and the ability to make and read charts. The Custodian noted that the datasets are downloadable but not into a “report;” rather, data can be exported into a .csv file.

The Custodian contends that the Complainant, who is currently incarcerated at a State correctional facility, sought a “report” that did not exist, and she denied access to the subject OPRA request accordingly. The Custodian certified that the Attorney General did not release a “report” in July 2021 as described by the Complainant. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). The Custodian further contended that the Complainant failed to provide any evidence contradicting that no “report” exists. The Custodian further argued that the Dashboard is not a report, but a publicly accessible online database accessible through the Office of the Attorney General’s (“OAG”) website.

The Custodian further disputed the Complainant’s Denial of Access Complaint argued that she unlawfully denied access to paper copies of the Dashboard. The Custodian first contended that the Complainant did not identify paper copies of the data sets in his OPRA request. The Custodian affirmed that to accommodate the Complainant, OAG would need to print over 3,619,000 lines of data totaling over 16,000 pages. The Custodian argued that disclosing the high volume of data would result in a substantial disruption of agency operations.

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 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. Pusterhofer, GRC 2005-49. Here, the Complainant’s OPRA request sought a hard copy of the “recent report surrounding [NJSP]” released in July 2021. In response, the Custodian denied the request because no report existed and directed the Complainant to the Dashboard. This complaint ensued, wherein the Complainant argued that he was unlawfully denied access to a clearly public record because he could not access it through the internet. The Complainant further argued that he believed that access included providing paper copies of the Dashboard data. In the SOI, the Custodian again asserted that the Dashboard was not in report form and thus no report existed. The Custodian further detailed how the Dashboard was set up and noted that producing paper copies would result in over 3,619,000 lines of data totaling over 16,000 pages: such production would result in a substantial disruption of agency operations.

A review of the facts available to the GRC in this case support that the Custodian lawfully denied access to the OPRA request on the basis that no “report” existed. Initially, the GRC notes that the term “report” is commonly described as “a detailed account”⁴ or “an account or statement . . . usually as the result of an observation, inquiry, *etc.*”⁵ The Dashboard, which was announced and posted in July 2021, is comprised of multiple years of raw datasets that are viewable, downloadable, and sortable. However, the Dashboard does not include a “report” that reduces all of that data into a series of conclusions and findings based on the data. Thus, no “report surrounding” the Dashboard exists. Further, it is clear from a plain reading of the Complainant’s request that he sought the type of commonly defined report of the Dashboard data through inclusion of the word “surrounding.” The forgoing statement is further supported by the Complainant’s Denial of Access Complaint argument that “accessability [sic] entails also making access [to the Dashboard] on/or in paper form.” Thus, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s 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.

In closing, the GRC notes that it does not address the substantial disruption argument here because the evidence of records indicates that the Complainant did not seek individual or a complete set of datasets from the Dashboard. Notwithstanding, it is worth noting that the medium within which a requestor seeks Dashboard datasets could induce such a question. As an example, the GRC reviewed the Dashboard dataset for just 2020 and found that it contained 398,930 rows of information.⁶ A print preview of all data resulted in an estimated 35,201 pages in landscape orientation and 42,440 pages in portrait orientation. The number of pages decreased dramatically to over 1,000 when all columns were forced onto a single page, but the resulting document was

⁴ <https://www.dictionary.com/browse/report> (accessed January 18, 2023).

⁵ <https://www.merriam-webster.com/dictionary/report> (accessed January 18, 2023).

⁶ <https://data.nj.gov/Public-Safety/NJSP-Traffic-Stop-Data-2020/kie7-5sud> (last access January 18, 2023).

mostly illegible. Thus, the substantial disruption question could certainly come to the forefront in the instance that a requestor seeks paper copies of the Dashboard data sets.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's 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: Frank F. Caruso
Executive Director

July 19, 2022