



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**May 30, 2023 Government Records Council Meeting**

Scott Madlinger  
Complainant

Complaint No. 2021-197

v.

Berkeley Township Police Department (Ocean)  
Custodian of Record

At the May 30, 2023 public meeting, the Government Records Council (“Council”) considered the May 23, 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:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Complainant’s request is invalid because it required research to locate the responsive records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. 2019); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Thus, the Custodian lawfully denied access to the request because it was invalid. N.J.S.A. 47:1A-6.

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 30<sup>th</sup> Day of May 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: June 6, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 30, 2023 Council Meeting**

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

**GRC Complaint No. 2021-197**

v.

**Berkeley Township Police Department (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of “all felony (indictable) arrest records (to include police reports)” from May 1, 2021 to July 31, 2021.

**Custodian of Record:** Joyce Settembrino

**Request Received by Custodian:** August 2, 2021

**Response Made by Custodian:** August 13, 2021

**GRC Complaint Received:** August 12, 2021

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

**Request:**

On August 2, 2021, the Complainant submitted an anonymous Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

**Denial of Access Complaint:**

On August 12, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to his OPRA request within the required statutory time frame.

**Response:**

On August 13, 2021, the ninth (9<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing apologizing for the delay due to her waiting on guidance from the Ocean County Prosecutor’s Office (“OCPO”) and being out of the office sick the day before. The Custodian denied the subject OPRA request as overly broad and invalid because “arrest records

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

<sup>2</sup> Represented by Robin La Bue, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.A. (Lakewood, 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.

are not classified as ‘felony’ or ‘indictable’ and fulfillment . . . would require the records department to research the charges filed in every arrest” during the identified time frame. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian further stated that the portion of the request seeking “police reports” was equally vague and failed to specify a particular record. The Custodian thus requested that the Complainant clarify his OPRA request, noting that his failure to respond would result in “the closure of this OPRA request.”

#### Statement of Information:

On September 3, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 2, 2021. The Custodian certified that she could not perform a search for responsive records based solely on whether the charge filed was “indictable.” The Custodian certified she responded in writing on August 13, 2021 denying the request as invalid.

The Custodian contended that although her response was “one day later,” the subject request was invalid because it required research. The Custodian argued that the Berkeley Township Police Department (“BTPD”) had no way of searching for records by charges filed against a particular suspect “as a sole perimeter.” The Custodian further argued that even if BTPD could conduct such a search, it would still be required to perform research to determine which charges were “indictable.” The Custodian asserted that specifically, she would have to review each complaint individually, research whether the charges “may have been indictable,” and then determine whether a case was transferred to OCPO for prosecution. The Custodian argued that she was not required to conduct an open-ended search of BTPD’s files to satisfy the instant request. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent, 381 N.J. Super. 30.

### Analysis

#### Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).<sup>4</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Complainant contended that the Custodian failed to timely respond to the subject OPRA request. In the SOI, the Custodian certified that the request was received on August 2, 2021

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<sup>4</sup> A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

with a deadline date of August 11, 2021. Further, the Custodian acknowledged that an untimely response occurred on August 13, 2021. Thus, the evidence of record clearly supports that a “deemed” denial of access occurred here and that the GRC should find as such.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

### **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. (emphasis added). Bent, 381 N.J. Super. at 37;<sup>5</sup> N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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<sup>5</sup> Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. *See e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. *See e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008).

[Id. *See also* Schulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

With respect to requests requiring research, the distinction between search and research is fact sensitive. That is, there are instances where the very specificity of a request requires only a search. As the Council determined in Verry v. Borough of S. Bound Brook (Somerset), GRC

Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), “. . . a valid OPRA request requires a search, not research . . . what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous [records] to determine if same is responsive: in other words, conduct research.”

Additionally, the court in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for communications regarding the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176.

Conversely, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE’s meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant’s requests . . .* because the Complainant’s four (4) requests for minutes “that include a motion made by the Union City Board of Education to approve the minutes” from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant’s requests are invalid under OPRA.

[Valdes, GRC 2011-147 *et seq.* (emphasis added) (citing N.J. Builders Ass’n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov’t Records Council, GRC Complaint No. 2013-278 (September 2014).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court’s rational of what amounted to research supports the Council’s decision in Valdes. There, the court reasoned that the plaintiff’s request:

[W]ould have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

More recently, in Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. 2019),<sup>6</sup> the complainant requested docketing records stemming from an appeal of an agency's final decision pertaining to a specific statute. The GRC found the request to be invalid, as it would cause the custodian to conduct research. On appeal, the court found that the request lacked a case name, party name, or docket number. The court also found that the records required the custodian "to search through thousands of cases to identify documents relevant to the request." Id. at 9-10. The court further found that the custodian would have to review each file to determine whether it was applicable to the specific issue identified by the complainant. The court therefore affirmed the GRC's decision that the request was invalid under OPRA.

In the matter before the Council, the Complainant submitted an OPRA request seeking access to "all felony (indictable) arrest records (to include police reports)" from May 1, 2021 to July 31, 2021. The Custodian responded denying the request as overly broad because it would require research, albeit after the expiration of the statutory response time frame. In the SOI, the Custodian expounded on her denial by detailing the actions necessary to attempt to locate responsive records.

Upon review and consideration of relevant case law, the GRC is persuaded that the subject request was invalid. First, the request sought generic "arrest records" to include "police reports." MAG, 375 N.J. Super. at 546 and Feiler-Jampel, GRC 2007-190. Second, even if the term "police reports" was specific enough to require only a search, the Custodian would have to conduct research to determine which of the arrests and resulting police reports during the identified time frame contained a "felony" or "indictable" offense. The request at issue here is like those presented in Valdes, GRC 2011-147, *et seq.*, and Carter, 2019 N.J. Super. Unpub LEXIS 2510.

Accordingly, the Complainant's request is invalid because it required research to locate the responsive records. MAG, 375 N.J. Super. at 546; Carter, 2019 N.J. Super. Unpub LEXIS 2510; Feiler-Jampel, GRC 2007-190; Valdes, GRC 2011-147. Thus, the Custodian lawfully denied access to the request because it was invalid. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

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<sup>6</sup> Affirmed on appeal regarding Carter v. N.J. Dep't of Cmty. Affairs, GRC Complaint No. 2016-262 (August 2018).



1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Complainant's request is invalid because it required research to locate the responsive records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. 2019); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Thus, the Custodian lawfully denied access to the request because it was invalid. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

May 23, 2023