



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 28, 2023 Government Records Council Meeting

Ashley Georges
Complainant

Complaint No. 2021-268

v.

Essex County Prosecutor's Office
Custodian of Record

At the February 28, 2023 public meeting, the Government Records Council ("Council") considered the February 21, 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 because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. 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 28th Day of February 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: March 6, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 28, 2023 Council Meeting**

**Ashley Georges¹
Complainant**

GRC Complaint No. 2021-268

v.

**Essex County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. Irvington Police Department ("IPD") report generated on November 29, 1999 in relation to CC#99-60377 where the Complainant was interviewed as a shooting victim.
2. Investigator Nicole Berrian's report regarding "identification procedures administered to Melanie Reddick on December 8, 1999.
3. Investigator "K. Swindel['s]" report of his interview, arrest, and charging of resisting arrest of the Complainant on December 8, 1999 at the Essex County Prosecutor's Office ("ECPO").
4. All reports and/or affidavits submitted to Harold W. Fullilove, J.S.C., by Detective John Cuccolo for the issuance of arrest warrant No. 325716 for the Complainant.
5. All reports and/or affidavits submitted to Judge Fullilove that resulted in his issuing a resisting arrest summons on December 8, 1999 (Docket No. C-7729-99).
6. All crime scene reports and photographs of the Kevin Jackson homicide crime scene on December 4, 1999.
7. All reports by Newark Police Department's ("NPD") Gang Intelligence Unit pertaining to a vehicle seizure conducted at a residence in Roselle, NJ.
8. Statement of Bryan Jackson taken by three (3) detectives on December 20, 1999.
9. Photo array signed by two (2) witnesses on December 7, and 8, 1999 respectively.
10. All photo arrays previously shown to other witnesses involved in the murder of Kevin Jackson.

Custodian of Record: Stephen A. Pogany
Request Received by Custodian: April 15, 2021
Response Made by Custodian: April 21, 2021
GRC Complaint Received: November 3, 2021

¹ No legal representation listed on record.

² Represented by Olivia Schumann, Esq. (Newark, NJ).

Background³

Request and Response:

On April 15, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 21, 2021, the Custodian responded in writing denying the Complainant’s OPRA request 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); Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 591 (2011); Janeczko v. N.J. Dep’t of Law & Pub. Safety, Div. of Criminal Justice, GRC Complaint No. 2002-79, *et seq.* (June 2004). The Custodian next stated that the request was denied under the “inter-agency or intra-agency advisory, consultative, or deliberative [(“ACD”)] material” exemption. N.J.S.A. 47:1A-1.1. The Custodian also stated that the request was denied because the requested records constitute unfiled discovery materials. N.J.S.A. 47:1A-9(b); Drinker, Biddle & Reath, LLP. v. N.J. Dep’t of Law & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 497-98 (App. Div. 2011).

The Custodian also stated that the OPRA request sought photographs that are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); Executive Order No. 69 (Gov. Whitman, 1997) (“EO 69”); McCrone (The Trenton Times) v. Burlington Cnty. Prosecutor’s Office, GRC Complaint No. 2005-146 (November 2005); Leak v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009). The Custodian also noted that stated that MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005) supported a denial of the basis that OPRA was not meant to be a tool for discovery. Id. at 546-549.

Denial of Access Complaint:

On November 3, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant failed to provide any argument or support for why he believed he was unlawfully denied access to the records other than stating “[p]lease see attached pages” in reference to the Custodian’s response.

Statement of Information:

On December 1, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 15, 2021. The Custodian certified that he responded in writing on April 21, 2021, citing several exemptions. The Custodian argued that he lawfully denied access to the subject OPRA request for all reasons cited in his April 15, 2021 response letter, noting that the Complainant sought a “litany of investigatory records concerning his criminal prosecution.”

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.

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.

A Denial of Access Complaint is not actionable when a complainant fails to provide any factual or legal basis alleging an unlawful denial of access to government records. In Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014), the complainant’s denial of access complaint lacked any arguments or legal precedent in support of his complaint. The Council found that the custodian did not unlawfully deny access to the OPRA request, in part, because the complainant failed to advance any argument in support of his claim. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014).

Here, the Complainant filed his complaint attaching the Custodian’s response to his OPRA request. However, the Complainant did not include any arguments that could reasonably be considered a claim. Furthermore, the Complainant does not argue, or even attempt to explain why he disagreed with the Custodian’s April 15, 2021 denial, noting only “[p]lease see attached pages” on the Denial of Access Complaint form. Thus, the Complainant failed to advance any argument in support of his claim for an unlawful denial of access to records and this complaint should be dismissed accordingly.⁴ See Loigman, GRC 2013-242.

Accordingly, because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman, GRC 2013-242; Inzelbuch, GRC 2013-20; Collazo, GRC 2013-310. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

⁴ The GRC notes that notwithstanding the Complainant’s failure to state a claim here, the evidence of record indicates that most, if not all, records sought pertained to the criminal investigation that led to the arrest and prosecution of the Complainant on homicide charges. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9; N. Jersey Media Grp., Inc., 229 N.J. 541; EO 69.

Prepared By: Frank F. Caruso
Executive Director

February 21, 2023