



State of New Jersey

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KIMBERLY K. HOLMES
Acting Commissioner

FINAL DECISION

August 29, 2023 Government Records Council Meeting

Ronald Brown
Complainant

Complaint No. 2021-314

v.

East Brunswick Police Department (Middlesex)
Custodian of Record

At the August 29, 2023 public meeting, the Government Records Council (“Council”) considered the August 22, 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 Complainant’s request item number 1 seeking e-mails is invalid because it failed to include the content and/or subject of the e-mails. Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Brown, Esq. (o/b/o Joyce W. Harley) v. Essex Cnty. College, GRC Complaint No. 2017-227 (Interim Order November 12, 2019). Thus, the Custodian lawfully denied access to said request item because it was invalid. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to the Complainant’s request item number 3 seeking internal affairs records. N.J.S.A. 47:1A-6. Specifically, internal affairs records are explicitly deemed confidential pursuant to the New Jersey Attorney General’s Internal Affairs Policy and Procedures and not subject to access under OPRA. N.J.S.A. 47:1A-9(b). See Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. 124 (2022); Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021).
3. Because the Custodian certified that she disclosed in a timely manner the records responsive to the Complainant’s request items number 2 and 4, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification, the Custodian did not unlawfully deny access to said request items. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

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 29th Day of August 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: September 5, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 29, 2023 Council Meeting**

**Ronald Brown¹
Complainant**

GRC Complaint No. 2021-314

v.

**East Brunswick Police Department (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of the following:

1. “Official copies of any/all emails sent to Frank Sutter on 12/8/2020, 12/9/2020, 12/10/2020 (x2), 12/15/2020, 12/16/2020, and 12/21/2020.
2. Official copy of any and all email responses from Frank Sutter to R. Brown RE: IA issues from 12/8/2020-12/22/2020.
3. Official signed and dated copies of the Internal Affairs complaints on Desk SGT Matthew Unkel and Detective Donald Carruth.
4. An official copy of this OPRA request.”

Custodian of Record: Tamar Lawful³

Request Received by Custodian: December 21, 2020

Responses Made by Custodian: December 29, 2020 and January 12, 2021

GRC Complaint Received: November 29, 2021

Background⁴

Request and Responses:

On December 21, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 29, 2020, the fifth (5th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that an extension of time was required until January 12, 2021.

¹ No legal representation listed on record.

² Represented by Anthony C. Iacocca, Esq., of Hoagland, Longo, Moran, Dunst & Doukas, LLP (New Brunswick, NJ).

³ Tamar Lawful is the present custodian of records. However, the custodian of records during preparation of the response to the OPRA request and Statement of Information was Nennette Perry. Because Ms. Perry interacted with the GRC staff as the custodian of records during the course of this complaint, she is referred to as the “Custodian” herein.

⁴ 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.

On January 6, 2021, the Custodian responded to the Complainant's request, informing him that request item number 1 was denied because it was overly broad. The Custodian disclosed seven (7) e-mails responsive to request item number 2. The Custodian denied access to request item number 3 as internal affairs ("IA") records. The Custodian disclosed the record responsive to request item number 4.

Denial of Access Complaint:

On November 29, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that he filed his request on December 21, 2020, and that the Custodian responded to request items numbered 1 through 3 on January 12, 2021, by requesting an extension of time.⁵ The Complainant asserted that the extension of time was a "De Facto Denial via Extension of time request." The Complainant stated the Custodian disclosed request item number 4 as an incomplete OPRA form because it contained no denial or justification.

On December 3, 2021, the Complainant forwarded to the GRC an amended Detail Summary page. In the narrative of the Detail Summary, the Complainant provided background information which led him to file a citizen's complaint against certain East Brunswick Police Department officers. The Complainant stated that he filed the complaint with Frank Sutter of the Internal Affairs Division on December 10, 2020. The Complainant stated that, although he submitted an OPRA request for a copy of the IA report he filed, the Custodian failed to provide access to the requested record for no lawful reason. The Complainant stated that OPRA provides that if the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The Complainant asserted that the Custodian used a "delayed fuse" tactic to deny him access to the requested records. The Complainant further stated that he is entitled to copies of the requested records under N.J.S.A. 47:1A-3(b), which provides for records of an investigation, as well as certain specific criminal investigatory information that must be disclosed. The Complainant asserted that a victim of a crime shall have access to the victim's own records.⁶

Statement of Information:

On December 3, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on December 21, 2020. The Custodian certified that she responded on December 29, 2020, notifying the Complainant that an extension of time would be needed until January 12, 2021.

The Custodian certified that on January 6, 2021, she again responded to the Complainant's request, informing the Complainant that request item number 1 was denied

⁵ The evidence of record reveals that the Custodian sought the extension of time via e-mail dated December 29, 2020.

⁶ The Complainant also attached to the complaint a copy of a ten (10) page e-mail that he had transmitted to Frank Sutter on December 29, 2020, titled "Re: Ron Brown related IA cases/Nennette 'the criminal' Perry." The e-mail appears to contain an integrated textbook or online article concerning narcissism. The Complainant does not explain in what manner the e-mail relates to the alleged denial of access; therefore, the GRC does not find it to be relevant to the adjudication of this complaint.

because it was overly broad and did not contain sufficient search criteria pursuant to Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Custodian certified she also denied access to request item number 3 because the request seeks internal affairs records which are exempt from disclosure pursuant to N. Jersey Media Group, Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 565 (2017). The Custodian further certified that she disclosed the records responsive to request item number 2, which consisted of seven (7) e-mails as well as the record responsive to request item number 4.

Additional Submissions:

On December 28, 2021, the Complainant e-mailed the GRC. The Complainant stated that, although he is aware that the GRC's regulations provide for only one submission from each party, and that his submission is the Denial of Access Complaint, he nonetheless is submitting a "supplement" to the complaint pursuant to N.J.A.C. 5:105-2.3(h)1.⁷ The Complainant stated he was denied access to IA records. The Complainant cited N.J.S.A. 47:1A-3(b) and stated that the provision lists specific criminal investigatory information which must be disclosed. The Complainant then argued that he should be granted ". . . full, unredacted access to the IA records he seeks, as he is a crime victim, he is the crime victim associated with the IA complaints he seeks access to." (Emphasis in original.)

Analysis

Validity of Request

Request Item Number 1

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 Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (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

⁷ This provision provides for a complainant amending the complaint as a matter of right (Title 5, Chapter 105; effective May 5, 2008).

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).]

Further, in Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005),⁸ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records accessible. "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents." Id. at 37.⁹

Moreover, in N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007), the court cited MAG by stating that ". . . when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA . . ." Id. at 180.

Regarding requests for communications, including e-mails, text messages, and written correspondence, the GRC has established criteria deemed necessary under OPRA to request them. In Elcavage, GRC 2009-07, the Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. NJ State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). Moreover, the Council has determined that requests seeking correspondence but failing to include the content and/or subject are invalid. See Brown, Esq. (o/b/o Joyce W. Harley) v. Essex Cnty. College, GRC Complaint No. 2017-227 (Interim Order November 12, 2019).

Here, the Complainant's OPRA request item number 1 sought "[o]fficial copies of any/all emails sent to Frank Sutter on 12/8/2020, 12/9/2020, 12/10/2020 (x2), 12/15/2020, 12/16/2020, and 12/21/2020." The Custodian asserted that the request item was overly broad and did not contain sufficient search criteria pursuant to Elcavage, GRC 2009-07. Upon examination by the GRC, it is clear that the request item is invalid because it failed to include all required criteria; to wit, the content and/or subject of the e-mail.

Accordingly, the Complainant's request item number 1 seeking e-mails is invalid because it failed to include the content and/or subject of the e-mails. Elcavage, GRC 2009-07; Brown,

⁸ Affirmed on appeal from Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

⁹ As stated in Bent, *supra*.

GRC 2017-227. Thus, the Custodian lawfully denied access to said request item because it was invalid. N.J.S.A. 47:1A-6.

Unlawful Denial of Access

Request Item Number 3

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 further provides that the provisions of this act “shall not abrogate or erode any executive or legislative privilege or *grant of confidentiality* heretofore established or recognized by the Constitution of this State, *statute*, court rule or judicial case law.” N.J.S.A. 47:1A-9(b) (emphasis added).

The Appellate Division has held that Attorney General Guidelines have the force of law for police entities. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). In particular, the New Jersey Attorney General’s Internal Affairs Policy and Procedures (“IAPP”) is bound upon all law enforcement agencies in New Jersey pursuant to statute. See N.J.S.A. 40A:14-181. Further, the IAPP explicitly provides that “[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information.” IAPP at 9.6.1 (August 2020). Consistent with the IAPP, the Council held in Wares v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-330 (June 2015) that IA records are not subject to access under OPRA (citing N.J.S.A. 47:1A-9). See also Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015); Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2009). More recently, the State’s Appellate and Supreme Courts have similarly reaffirmed that IA records are not disclosable under OPRA. Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385, 404-05 (App. Div. 2021); Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. 124, 142-43 (2022) (citing N.J.S.A. 47:1A-9(b)).

Here, the Complainant’s request item number 3 sought copies of the IA complaints filed against two (2) police officers. The Complainant argued at length that he is entitled to the records as a victim of a crime. In the SOI, the Custodian maintained that IA records are not disclosable under OPRA; therefore, the Custodian denied access to said records. Moreover, whether or not the Complainant is the victim of a crime has no bearing on IA records because such records, while under IA investigation, are not criminal investigatory records.

Prevailing court case law and the GRC’s prior decisions support the Custodian’s denial of this portion of the request. See O’Shea, 410 N.J. Super. at 382; Rivera, 250 N.J. at 142-43; Gannett, 467 N.J. Super. at 404-05. Specifically, both the courts and Council have held that records related to IA investigations were exempt from disclosure under the IAPP confidentiality provision. N.J.S.A. 47:1A-9(b).

Therefore, the Custodian lawfully denied access to the Complainant's request item number 3 seeking IA records. N.J.S.A. 47:1A-6. Specifically, IA records are explicitly deemed confidential pursuant to the IAPP and not subject to access under OPRA. N.J.S.A. 47:1A-9(b). See Rivera, 250 N.J. at 142-43; Gannett, 467 N.J. Super. at 404-05.

Request Items Numbered 2 and 4

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

In request item number 2, the Complainant requested a copy of "any and all email responses from Frank Sutter to R. Brown RE: IA issues from 12/8/2020-12/22/2020." The Custodian certified that she located records responsive to this request item, which consisted of seven (7) e-mails, and disclosed same to the Complainant on January 6, 2021. As request item number 4, the Complainant sought a copy of the OPRA request which formed the basis of this complaint.¹⁰ The Custodian certified that she disclosed to the Complaint the record responsive to request item number 4 on January 6, 2021. The Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.

Therefore, because the Custodian certified that she disclosed in a timely manner the records responsive to the Complainant's request items number 2 and 4, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to said request items. N.J.S.A. 47:1A-6; Danis, GRC 2009-156, *et seq.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's request item number 1 seeking e-mails is invalid because it failed to include the content and/or subject of the e-mails. Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Brown, Esq. (o/b/o Joyce W.

¹⁰ Although the Complainant wanted a copy of the request form containing denial information, the GRC does not require custodians to respond to an OPRA request on the official request form. In Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies' OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. Renna was decided on May 21, 2009. Therefore, as of May 2009, requestors were no longer required to submit an OPRA request on an official form. As such, the section of N.J.S.A. 47:1A-5(g), which provides "[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor" was effectively refashioned by case law.

- Harley) v. Essex Cnty. College, GRC Complaint No. 2017-227 (Interim Order November 12, 2019). Thus, the Custodian lawfully denied access to said request item because it was invalid. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to the Complainant's request item number 3 seeking internal affairs records. N.J.S.A. 47:1A-6. Specifically, internal affairs records are explicitly deemed confidential pursuant to the New Jersey Attorney General's Internal Affairs Policy and Procedures and not subject to access under OPRA. N.J.S.A. 47:1A-9(b). See Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022); Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021).
 3. Because the Custodian certified that she disclosed in a timely manner the records responsive to the Complainant's request items number 2 and 4, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to said request items. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

Prepared By: John E. Stewart

August 22, 2023