



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

INTERIM ORDER

March 26, 2024 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o African American
Data & Research Institute)
Complainant

Complaint No. 2022-22

v.

Holland Township Police Department (Hunterdon)
Custodian of Record

At the March 26, 2024 public meeting, the Government Records Council (“Council”) considered the March 19, 2024 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 she lawfully denied access to the Complainant’s OPRA request for the “[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension” of police officers who separated from Holland Township between 2014 to the present. 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); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). The Custodian shall identify, locate, and produce the requested personnel information. 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 ten (10) 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

3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking any "agreement" between Holland Township and separated officers. Specifically, the Custodian certified, and the record reflects, that no such 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).
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 26th Day of March 2024

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 28, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 26, 2024 Council Meeting**

**Rotimi Owoh, Esq. (on behalf of African American
Data & Research Institute)¹
Complainant**

GRC Complaint No. 2022-22

v.

**Holland Township Police Department (Hunterdon)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2014 to the present. N.J.S.A. 47:1A-10.

- a. This request includes any agreement entered with each one of the separated police officer(s).
- b. When stating the reason for separation, please note that some police officers separate due to plea deal, criminal convictions, criminal charges, sentences, and or other court agreement or court proceedings that require officers to be separated from your police department and or law enforcement jobs.
- c. Some police officers separate due to internal affairs investigations within the police departments.

Custodian of Record: Catherine M. Miller

Request Received by Custodian: January 21, 2022

Response Made by Custodian: January 26, 2022

GRC Complaint Received: February 1, 2022

Background³

Request and Response:

On January 21, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 26, 2022, the Custodian responded in writing stating that no responsive records exist, including records that may be responsive to subparts a, b, and c.

¹ The Complainant represents the African American Data & Research Institute.

² Represented by Matthew P. Lyons, Esq., of Gebhardt & Kiefer (Annandale, 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.

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Holland Township Police Department (Hunterdon), 2022-22 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On February 1, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records did not provide the reasons for separation. The Complainant also asserted that creating a new spreadsheet or list stating “terminated” or “resigned” or “retired” is not sufficient. The Complainant also stated that the response did not state whether any officers left due to a plea deal or court proceeding that precludes them from law enforcement positions.

The Complainant requested that the GRC compel the Custodian to comply fully with the OPRA request and award counsel fees.

Statement of Information:

On March 7, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 21, 2022. The Custodian certified she contacted the Chief of Police for Holland Township (“Township”) to determine if a document containing the requested information was made, maintained, or kept on file with his office. The Custodian certified she responded in writing on January 26, 2022, stating that no responsive records exist.

The Custodian contended that the request required the Custodian to conduct research, which she was not obligated to perform under OPRA, citing Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007) and MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). The Custodian further noted that a custodian was not required to disclose a record that did not exist in the format requested, citing Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009).

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. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁴ 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).

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. at 534; Donato, GRC 2005-182. 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).

Names, Date of Hire, Date of Separation and Reason for Separation, Salary, Payroll Record, Amount and Type of Pension

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 (“Section 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.

Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC

⁴ Affirmed on appeal from Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004). Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Holland Township Police Department (Hunterdon), 2022-22 – Findings and Recommendations of the Executive Director

Complaint No. 2011-64 (Interim Order dated August 28, 2012).

Here, the Complainant requested in part Section 10 information on separated police officers from 2014 to present. The Custodian responded to the Complainant stating that no records exist. In the SOI, the Custodian argued that responding to the request required conducting research, which she was not obligated to perform under OPRA.

Upon review, the evidence is clear that the Custodian improperly determined that this portion of the request was invalid. In accordance with Danis, the Complainant's request for Section 10 information constituted a "government record" under N.J.S.A. 47:1A-6. Notwithstanding whether the information was within several records or in an electronic database, the Custodian was obligated to provide the most comprehensive records containing the responsive information. See Valdes, GRC 2011-64 and Matthews, GRC 2008-123.

Therefore, the Custodian has not borne her burden of proving she lawfully denied access to the Complainant's OPRA request for the "[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension" of police officers who separated from the Township between 2014 to the present. N.J.S.A. 47:1A-6; Danis, GRC 2009-156; Valdes, GRC 2011-64; Matthews, GRC 2008-123. The Custodian shall identify, locate, and produce the requested personnel information. 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.

Agreements

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, in addition to the requested personnel information, the Complainant sought any "agreement" between the Township and any separated officer that would contain the "reason for separation." In response to the request and within the SOI, the Custodian certified and that no responsive agreements were located. Additionally, the Complainant failed to present any evidence that the Township possessed same at the time of the request, or to refute the Custodian's certification.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking any "agreement" between the Township and separated officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Prevailing Party Attorney's Fees

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has not borne her burden of proving she lawfully denied access to the Complainant's OPRA request for the "[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension" of police officers who separated from Holland Township between 2014 to the present. 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); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). The Custodian shall identify, locate, and produce the requested personnel information. 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 ten (10) 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 has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking any "agreement" between Holland Township and separated officers. Specifically, the Custodian certified, and the record reflects, that no such 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).
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

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.

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Holland Township Police Department (Hunterdon), 2022-22 – Findings and Recommendations of the Executive Director

Prepared By: Samuel A. Rosado
Staff Attorney

March 19, 2024