



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

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

April 29, 2025 Government Records Council Meeting

Drew Bradford
Complainant

GRC Complaint No. 2022-475

v.

Union County Prosecutor's Office
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council ("Council") considered the April 15, 2025 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 lawfully denied access to the unlisted phone number included in the Union County Prosecutor's Office internal affairs file. N.J.S.A. 47:1A-6. Specifically, New Jersey courts and the Council have routinely supported the nondisclosure of telephone numbers in government records consistent with N.J.S.A. 47:1A-1.1. See Livecchia v. Borough of Mt. Arlington, 421 N.J. Super. 24 (App. Div. 2011); Papiez v. Cnty. of Mercer, GRC Complaint No. 2012-52 (April 2013). Because the requested information is exempt from disclosure under N.J.S.A. 47:1A-1.1, the GRC will not address the remaining asserted exemptions.

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 April 2025

John A. Alexy, 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: May 5, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**Drew Bradford¹
Complainant**

GRC Complaint No. 2022-475

v.

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

Records Relevant to Complaint: Physical copy of the “record of” a phone number for a specific individual.³

Custodian of Record: Robert J. Rosenthal

Request Received by Custodian: August 29, 2022

Response Made by Custodian: September 1, 2022

GRC Complaint Received: September 8, 2022

Background⁴

Request and Response:

On August 22, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned record. On September 1, 2022, the Custodian responded in writing denying access to the requested record pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-5(a), stating that “the statute’s definition of ‘government record’ specifically excludes, and deems confidential, that portion of any document which discloses the unlisted telephone number of any person.”

Denial of Access Complaint:

On September 8, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that Lieutenant Brian O’Malley and Sargeant Rudy Correia of the Union County Prosecutor’s Office (“UCPO”) were in possession of the requested record and unlawfully denied him access to same. The Complainant asserted that he is entitled to the requested record as the victim of a crime, as the Power of Attorney

¹ No legal representation listed on record.

² Represented by Union County Assistant County Counsel Justin Halwagy, Esq.

³ The Complainant sought additional records that are not at issue in this complaint.

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.

for the specific individual whose phone number he sought, and because said individual is the key witness in a civil matter for which the Complainant claimed to be responsible for the costs associated with same.

Statement of Information:⁵

On April 28, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 29, 2022. The Custodian stated that his search for the requested information involved communicating with Lt. O’Malley and Sgt. Correia who advised that the unlisted phone number for the individual existed on a one-page note within a UCPO confidential internal affairs file. The Custodian certified that he responded in writing on September 1, 2022, denying access to the requested record.

The Custodian asserted that unlisted phone numbers are not deemed government records and shall be redacted pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-5(a). The Custodian further asserted that the UCPO obtained the requested telephone number during an internal affairs investigation and noted that all information gathered during the course of such an investigation is exempt from disclosure under OPRA pursuant to the New Jersey Attorney General’s Internal Affairs Policy & Procedures (“IAPP”), § 9.6.1 (rev. 11/2/2022), N.J.S.A. 47:1A-9, and Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. Super. 124, 141-43 (2022). The Custodian also stated that OPRA’s privacy exemption restricts public entities to safeguard from disclosure a citizen’s personal information when disclosure would violate the citizen’s expectation of privacy pursuant to Burnett v. Cnty. of Bergen, 198 N.J. 408, 414-28 (2009).

The Custodian rejected the Complainant’s assertion that he is entitled to the subject record by way of Power of Attorney or because he was a “key witness” in civil litigation. The Custodian argued that neither issue had any impact on the disclosability of records under OPRA. The Custodian further rejected the Complainant’s assertion that he is entitled to the subject record under the crime victim exception. Specifically, the Custodian certified that he conducted a search of UCPO records, which revealed there were no pending charges against the subject individual or the Complainant during the subject time.

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.

N.J.S.A. 47:1A-1.1 provides, in relevant part, that a government record shall not include a “portion of any document which discloses [an] . . . unlisted telephone number . . . of any person .

⁵ On November 22, 2022, this complaint was referred to mediation. On March 23, 2023, this complaint was referred back to the GRC for adjudication.

...” N.J.S.A. 47:1A-5(a) specifically mandates that certain information contained in a government record that would otherwise be exempt, including an unlisted telephone number, shall be redacted prior to its disclosure.

Additionally, the GRC and courts have routinely supported the nondisclosure of telephone numbers in government records consistent with N.J.S.A. 47:1A-1.1; See Livecchia v. Borough of Mt. Arlington, 421 N.J. Super. 24 (App. Div. 2011). In Livecchia, the Appellate Division affirmed the Council’s decision in Livecchia v. Borough of Mt. Arlington (Morris), GRC Complaint No. 2008-80 (Interim Order dated April 8, 2010). There, a portion of the complaint addressed employee cell phone bills that contained telephone numbers and city and state information which had been redacted. The Council, looking to Smith v. Dep’t of Corr., GRC Complaint No. 2004-163 (June 2005), held that redactions of the telephone numbers on cell phone billing records “satisfied the need for confidentiality . . .” Livecchia at 9-10 (citing N. Jersey Newspapers, Co. v. Passaic Cnty. Bd. of Chosen Freeholders, 127 N.J. 9 (1992)). However, the Council ordered the custodian to disclose the records without redactions for the city and state.

The custodian subsequently appealed the Council’s decision arguing in part that the custodian lawfully redacted the city and state information from the responsive bills. In affirming the Council’s decision that the city and state should be disclosed, the court held that:

The privacy interest attached to government telephone records, which protects the person called and his or her telephone number, does not similarly cloak the destination location of calls placed by government employees when necessary to advance the watchful eye of a vigilant public seeking accountability of its municipal representatives.

[Id. at 19].

Thereafter, in Papiez v. Cnty. of Mercer, GRC Complaint No. 2012-52 (April 2013), the Council held that the custodian unlawfully denied access to the requested itemized cell phone bills. Id. (Interim Order dated March 22, 2013) at 3. In complying with the Council’s Interim Order, the custodian redacted all telephone numbers on the bills in accordance with Livecchia, GRC 2008-80. The complainant argued that the redactions were unlawful. The Council reviewed the issue and found that the custodian’s response was consistent with Livecchia; thus, no unlawful denial of access occurred. Id. (Final Decision dated April 30, 2013) at 3-4.

In the Denial of Access Complaint before the Council, the Complainant argued that the Custodian unlawfully denied his request for access to an unlisted phone number. The Complainant asserted that he was entitled to this information as the victim of a crime by way of his Power of Attorney on behalf of a specific individual and because said individual is the key witness in a civil matter in which the Complainant claimed he would be responsible for certain costs associated with same. In the SOI, the Custodian argued that his denial was lawful pursuant to OPRA and the IAPP.

A review of the instant record supports a finding that the Custodian has borne his burden of proof demonstrating that he lawfully denied access to the requested unlisted telephone number.

Specifically, the information sought is an unlisted telephone number of an individual⁶ that is expressly exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1. See, e.g., Livecchia, 421 N.J. Super. 24; Papiez, GRC 2012-52. Furthermore, the Complainant's asserted bases for qualifying him to obtain the unlisted telephone number are not contemplated as exceptions to the clear OPRA exemption.

Accordingly, the Custodian lawfully denied access to the unlisted phone number included in the Union County Prosecutor's Office IA file. See N.J.S.A. 47:1A-6. Specifically, New Jersey courts and the Council have routinely supported the nondisclosure of telephone numbers in government records consistent with N.J.S.A. 47:1A-1.1. See Livecchia, 421 N.J. Super. 24; Papiez, GRC 2012-52. Because the requested information is exempt from disclosure under N.J.S.A. 47:1A-1.1, the GRC will not address the remaining asserted exemptions.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the unlisted phone number included in the Union County Prosecutor's Office internal affairs file. N.J.S.A. 47:1A-6. Specifically, New Jersey courts and the Council have routinely supported the nondisclosure of telephone numbers in government records consistent with N.J.S.A. 47:1A-1.1. See Livecchia v. Borough of Mt. Arlington, 421 N.J. Super. 24 (App. Div. 2011); Papiez v. Cnty. of Mercer, GRC Complaint No. 2012-52 (April 2013). Because the requested information is exempt from disclosure under N.J.S.A. 47:1A-1.1, the GRC will not address the remaining asserted exemptions.

Prepared By: Jennifer C. Howell
Staff Attorney

April 15, 2025

⁶ The GRC notes that the record containing the responsive telephone number is a note taken during an internal affairs investigation, which means the record itself is likely also exempt from disclosure under the IAPP.