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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

June 24, 2025 Government Records Council Meeting

Sean Mussenden
Complainant

Complaint No. 2022-633

v.

Bayonne Police Department (Hudson)
Custodian of Record

At the June 24, 2025, public meeting, the Government Records Council (“Council”) considered the June 17, 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:

1. The portions of the Complainant’s request seeking “all personnel records” or “records” are invalid because they are blanket requests that failed to identify the specific records sought. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 171 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the Complainant’s request. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to the Complainant’s OPRA request items seeking employment applications and commendations because such records are exempt from disclosure under OPRA’s personnel records exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. See Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004). Additionally, the Custodian lawfully denied access to the Complainant’s request items seeking disciplinary, complaint, and investigation records are exempt from disclosure under OPRA and the IAPP. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

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 24th Day of June 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: June 26, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 24, 2025 Council Meeting**

**Sean Mussenden¹
Complainant**

GRC Complaint No. 2022-633

v.

**Bayonne Police Department (Hudson)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of “all personnel records” for Officer George Ponik including, but not limited to:

1. “Materials [he] submitted as part of an employment application.
2. Records detailing [his] job-related performance including commendations and disciplinary actions.
3. Records of formal or informal complaints or criminal allegations made against [him] by members of the public, Bayonne Police Department employees, or other law enforcement agencies.
4. Records of investigations into [him] stemming from internal or external complaints. This includes records detailing any disciplinary action or other outcome of those investigations.”

Custodian of Record: Madeline C. Medina

Request Received by Custodian: July 1, 2022

Response Made by Custodian: July 13, 2022

GRC Complaint Received: November 7, 2022

Background³

Request and Response:

On June 29, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 13, 2022, the seventh (7th) business day after receipt of the OPRA request, Custodian’s Counsel responded in writing on behalf of the Custodian denying the request in its entirety pursuant to the personnel records exemption N.J.S.A. 47:1A-10 and the Internal Affairs Policy and Procedures (“IAPP”) applicable

¹ No legal representation listed on record.

² Represented by Assistant City Attorney Jessica H. Connors, Esq. (Bayonne, 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.

to OPRA through N.J.S.A. 47:1A-9(b) and contemplated in Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124, 142 (2022).

Denial of Access Complaint:

On November 7, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the records sought fall under the N.J.S.A. 47:1A-10 exception allowing for disclosure of certain personnel records. The Complainant argued the Custodian should have disclosed all information outlined in N.J.S.A. 47:1A-10 for Officer Ponik. The Complainant noted the Custodian should comply with his OPRA request because other New Jersey police departments have accommodated requests for similar records fitting the above exceptions, including the Lower Township Police Department.

Statement of Information:

On December 7, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on July 1, 2022. The Custodian certified the Complainant originally submitted the OPRA request directly to the Bayonne Police Department, who forwarded same to the Law Department for the purpose of denying the request under OPRA. The Custodian certified that Counsel responded in writing on her behalf on July 14, 2022⁴ denying the request in its entirety pursuant to N.J.S.A. 47:1A-10 and the IAPP by operation of N.J.S.A. 47:1A-9(b).

The Custodian argued that the portion of the OPRA request for "all personnel records" was invalid in accordance with N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007), because it is a "complex" request that failed to specify or identify documents. The Custodian maintained the City of Bayonne ("City") did not produce any personnel records in accordance with case law because no government records were specifically identified. The Custodian noted that it was not until the instant complaint that the Complainant first identified the following records sought: "individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount of any pension received." The Custodian certified that, in the interest of full transparency, the City attached to the SOI Officer Ponik's CAMPS record reflecting his date of hire, title, and salary at his date of hire. The Custodian argued that the Complainant did not request a specific payroll record and therefore, should file a separate OPRA request for the specific payroll record sought.

The Custodian argued that because the Complainant's OPRA request items sought Officer Ponik's non-disclosable personnel and internal affairs records under N.J.S.A. 47:1A-10, no unlawful denial of access occurred. The Custodian argued that, contrary to the Complainant's position, the City was under no obligation to disclose these records simply because other New Jersey police departments have disclosed similar records. Additionally, the Custodian argued that denial was lawful pursuant to N.J.S.A. 47:1A-9(b); N.J.S.A. 40A:14-181, and Rivera, 250 N.J. 124, which guaranteed that internal affairs investigations and all supporting materials are considered confidential information.

⁴ The GRC notes that the letter submitted with the Denial of Access Complaint was dated July 13, 2022.

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 Entm’t, LLC v. Div. of ABC, 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 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);⁵ N.J. Builders Ass’n, 390 N.J. Super. at 166; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Invalid OPRA requests typically fall 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).

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

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. Id.; see also Steinbauer-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) at 12-13 (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).

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. 2007-156 (February 2008).

[Id.; see also Schulz v. NJ 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).]

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court held that plaintiff’s request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would 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.]

In the matter before the Council, the Complainant's request sought "all personnel records" as well as requests for "records" related to job performance, formal or informal complaints, and investigations related to Officer Ponik. In the Denial of Access Complaint, the Complainant argued that the records sought fall under the N.J.S.A. 47:1A-10 exception allowing for disclosure of certain personnel records. In the SOI, the Custodian argued the portion of the instant OPRA request for "all personnel records" or general "records" is invalid because it failed to identify the specific government records sought. Furthermore, the Custodian argued that it was not until the instant complaint that the Complainant specifically mentioned seeking the "individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount of any pension received."

As in Feiler-Jampel, GRC 2007-190, the Council has repeatedly determined that requests for entire files are invalid. See also Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011); Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011); Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012). The GRC is satisfied that the OPRA request as written was invalid and the Custodian lawfully denied access to it. The request was also very similar to the requests at issue in Morgano, GRC 2010-145 and Feiler-Jampel, GRC 2007-190. Further, the Complainant's original OPRA request did not seek the specific personnel information contained in N.J.S.A. 47:1A-10 and instead requested a universe of records that would have required the Custodian to conduct research to locate responsive records. Thus, a holding consistent with prevailing case law is warranted here.

Accordingly, the portions of the Complainant's request seeking "all personnel records" or "records" are invalid because they are blanket requests that failed to identify the specific records sought. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Feiler-Jampel, GRC 2007-190. Thus, the Custodian lawfully denied access to this portion of the Complainant's request. N.J.S.A. 47:1A-6.

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.

OPRA provides that "[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record" N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and "proceeds with a few narrow exceptions that . . . need to be considered." Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004), the Council held that:

The Complainant's request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent [part] that "the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a public record and shall not be made available for public access" [emphasis omitted]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

[Id.]

Further, the personnel records exemption may apply to records that "bear many of the indicia of personnel files." N. Jersey Media Grp. v. Bergen Cnty. Prosecutor's Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014). In Rodriguez, GRC 2013-296, the Council held that "disciplinary actions are not specifically identified as personnel information subject to disclosure under OPRA." Id. at 5.

Moreover, 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 Internal Affairs Policy & 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 internal affairs records are not subject to access under OPRA. (citing N.J.S.A. 47:1A-9). See also Rivera, 250 N.J. 124, (holding that internal affairs reports are exempt from disclosure under OPRA); 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 2010).

Having determined the portions of the Complainant's OPRA request for "all personnel records" or "records" are invalid, the GRC will determine whether the remaining portions of the request were lawfully denied.

Here, the Complainant's OPRA request items sought access to several types of records related to Officer Ponik, including employment applications, commendations and disciplinary actions, formal and informal complaints, and investigation records of internal or external complaints. The Custodian responded in writing denying access to the subject OPRA request under N.J.S.A. 47:1A-10, N.J.S.A. 47:1A-9(b), N.J.S.A. 40A:14-181, and Rivera. The Complainant subsequently filed this complaint alleging that he was entitled to certain specific personnel information per N.J.S.A. 47:1A-10 and that other New Jersey police departments have disclosed similar records to him. In the SOI, the Custodian maintained her position that the records sought are exempt from disclosure.

Upon review of all facts and available caselaw, the GRC finds that a lawful denial of access occurred. Regarding employment applications responsive to OPRA request item No. 1, the Council

has previously determined that same are not disclosable under N.J.S.A. 47:1A-10 because they do not fall within any of the excepted information required to be disclosed under OPRA. See Toscano v. N.J. Dep't of Human Servs., Div. of Health Servs., GRC Complaint No. 2010-147 (May 2011). The same can be said about "commendations," which are also not identified as disclosable in N.J.S.A. 47:1A-10. Regarding the remaining OPRA request items seeking disciplinary actions, complaints, and investigation records, precedential case law supports that a lawful denial of access occurred under both N.J.S.A. 47:1A-10 and the IAPP. See Rivera, 250 N.J. 124; Merino, GRC 2003-110; Rodriguez, GRC 2013-296. For these reasons, the GRC is satisfied that the Custodian lawfully denied access to the remainder of the subject OPRA request.

Therefore, the Custodian lawfully denied access to the Complainant's OPRA request items seeking employment applications and commendations because such records are exempt from disclosure under OPRA's personnel records exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. See Merino, GRC 2003-110. Additionally, the Custodian lawfully denied access to the Complainant's request items seeking disciplinary, complaint, and investigation records are exempt from disclosure under OPRA and the IAPP. See O'Shea, 410 N.J. Super. 371; Rivera, 250 N.J. 124; Merino, GRC 2003-110; Rodriguez, GRC 2013-296.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The portions of the Complainant's request seeking "all personnel records" or "records" are invalid because they are blanket requests that failed to identify the specific records sought. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 171 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to the Complainant's OPRA request items seeking employment applications and commendations because such records are exempt from disclosure under OPRA's personnel records exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. See Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004). Additionally, the Custodian lawfully denied access to the Complainant's request items seeking disciplinary, complaint, and investigation records are exempt from disclosure under OPRA and the IAPP. See O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

Prepared By: Maria M. Rossi
Staff Attorney

June 17, 2025