



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

November 7, 2024 Government Records Council Meeting

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

Complaint No. 2022-68

v.

Lyndhurst Police Department (Bergen)
Custodian of Record

At the November 7, 2024, public meeting, the Government Records Council (“Council”) considered the October 29, 2024, Supplemental 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 Council dismiss this complaint because the Complainant withdrew it in writing to the GRC on September 12, 2024. Thus, no further adjudication is required.

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 7th Day of November 2024

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: November 12, 2024



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 7, 2024 Council Meeting**

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

GRC Complaint No. 2022-68

v.

**Lyndhurst Police Department (Bergen)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: Deana McCann³

Request Received by Custodian: January 10, 2022

Response Made by Custodian: February 7, 2022

GRC Complaint Received: March 28, 2022

Background

August 27, 2024 Council Meeting:

At its August 27, 2024 public meeting, the Council considered the August 20, 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, found that:

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

² No representation listed on record.

³ The current Records Custodian is Angela White.

1. The Custodian's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian" N.J.S.A. 47:1A-7(b).
2. The Custodian unlawfully denied access to the portion of the Complainant's January 10, 2022 OPRA request seeking disclosable personnel information of separated police officers from 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 current Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.
3. The Custodian may have unlawfully denied access to the Complainant's OPRA request seeking any "agreement[s]" between the Township of Lyndhurst and separated police officers. N.J.S.A. 47:1A-6. Specifically, there is insufficient evidence in the record confirming whether the Township possessed responsive records. Thus, the current Custodian must perform a complete search for responsive records. Should the current Custodian not locate any responsive records, she must certify this fact.
4. **The Custodian shall comply with conclusion Nos. 2 & 3 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 deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
5. The Council defers analysis of whether the Complainant is a prevailing party pending the current Custodian's compliance with the Council's Interim Order.

Procedural History:

On August 29, 2024, the Council distributed its Interim Order to all parties. On September 5, 2024, the current Custodian responded to the Council's Interim Order. The current Custodian

⁴ 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.

⁵ "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."

⁶ 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.

provided a spreadsheet containing the requested personnel information as well as payroll records for the separated officers. The current Custodian also provided agreements between the Township of Lyndhurst (“Township”) and seven (7) of the separated officers. The current Custodian also provided seven (7) Township resolutions memorializing some of the separations and certified confirmation of compliance to the Executive Director.

On September 12, 2024, the Complainant e-mailed the GRC stating that the parties have resolved the matter to include counsel fees. The GRC replied that day, inquiring whether the Complainant wished to pursue the matter further. The Complainant responded to the GRC, stating that all issues have been resolved and the matter can be dismissed.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss this complaint because the Complainant withdrew it in writing to the GRC on September 12, 2024. Thus, no further adjudication is required.

Prepared By: Samuel A. Rosado
Senior Staff Attorney

October 29, 2024



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

August 27, 2024 Government Records Council Meeting

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

Complaint No. 2022-68

v.
Lyndhurst Police Department (Bergen)
Custodian of Record

At the August 27, 2024 public meeting, the Government Records Council (“Council”) considered the August 20, 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’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian” N.J.S.A. 47:1A-7(b).
2. The Custodian unlawfully denied access to the portion of the Complainant’s January 10, 2022 OPRA request seeking disclosable personnel information of separated police officers from 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 current Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.
3. The Custodian may have unlawfully denied access to the Complainant’s OPRA request seeking any “agreement[s]” between the Township of Lyndhurst and separated police officers. N.J.S.A. 47:1A-6. Specifically, there is insufficient evidence in the record confirming whether the Township possessed responsive records. Thus, the current Custodian must perform a complete search for responsive records. Should the current Custodian not locate any responsive records, she must certify this fact.
4. **The Custodian shall comply with conclusion Nos. 2 & 3 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

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

Interim Order Rendered by the
Government Records Council
On The 27th Day of August 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: August 29, 2024

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 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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 27, 2024 Council Meeting**

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

GRC Complaint No. 2022-68

v.

**Lyndhurst Police Department (Bergen)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: Deana McCann³

Request Received by Custodian: January 10, 2022

Response Made by Custodian: February 7, 2022

GRC Complaint Received: March 28, 2022

Background⁴

Request and Response:

On January 10, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 7, 2022, the Custodian responded in writing, stating that no responsive records exist.

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

² No representation listed on record.

³ The current Records Custodian is Angela White.

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.

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Lyndhurst Police Department (Bergen), 2022-68 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On March 28, 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 the GRC to order the Custodian to comply with the Supreme Court decision Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022), issued on March 7, 2022. The Complainant also requested the GRC award counsel fees.⁵

Statement of Information:

On May 5, 2022, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. On May 11, 2022, the GRC sent a “No Defense” letter to the Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC noted that the Custodian’s failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f). The GRC did not receive any correspondence from the Custodian.

Analysis

Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

⁵ The Complainant further noted that access to the records should have been granted under the “common law ‘right to access public records.’” However, the GRC does not have the authority to address a requestor’s common law right to access records. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013); Kelly v. N.J. Dep’t of Transp., GRC Complaint No. 2010-215 (November 2011). Thus, the GRC cannot address any common law right of access to the requested records.

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Lyndhurst Police Department (Bergen), 2022-68 – Findings and Recommendations of the Executive Director

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the Custodian did not comply with the GRC’s initial request for an SOI. On May 11, 2022, after the expiration of the five (5) business day deadline, the GRC transmitted a “No Defense” letter to the Custodian providing him an additional three (3) business days to submit the requested SOI. The transmission also included a copy of the original SOI letter providing detailed instructions on how to properly submit an SOI. The GRC never received a completed SOI or any communication from the Custodian.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

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.

Personnel Information

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” is information which is specifically considered to be a “government record” under N.J.S.A. 47:1A-10 (“Section 10”), and that “payroll records” must be disclosed pursuant to Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). 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 [agency] 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). See also Owoh, Esq. (OBO AADARI) v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2022-12 (March 2024) (holding that disclosing personnel information in a spreadsheet amassed from an electronic database constitutes a valid response under OPRA).

Furthermore, 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. See Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012). In Valdes, the complainant sought the same personnel information at issue in the instant case. The custodian denied access since the requestor sought only information and did not identify a specific record that may contain the requested information. The Council held that OPRA did not require the custodian to extract and synthesize requested information from government records, but instead to provide the most comprehensive record containing said information, with necessary redactions. See also Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).

In the instant matter, the Complainant requested Section 10 information from the Custodian of police officers who have separated from the Township of Lyndhurst ("Township"). In response, the Custodian stated that no responsive records exist. In accordance with Danis, the Complainant's request for Section 10 information constituted a "government record" under N.J.S.A. 47:1A-6. Thus, 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.

Accordingly, the Custodian unlawfully denied access to the portion of the Complainant's January 10, 2022 OPRA request seeking disclosable personnel information of separated police officers from 2014 to the present. N.J.S.A. 47:1A-6; Danis, GRC 2009-156; Valdes, GRC 2011-64; Matthews, GRC 2008-123. The current Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.

Agreements

In addition to the requested personnel information, the Complainant sought any "agreement" between the Township and any separated officer containing the "reason for separation." On February 7, 2022, the Custodian responded to the Complainant stating that no responsive records exist. However, the Custodian failed to submit an SOI certifying her response as accurate. Thus, the evidence of record is insufficient to confirm whether the Township possesses responsive agreements with separated police officers.

Therefore, the Custodian may have unlawfully denied access to the Complainant's OPRA request seeking any "agreement[s]" between the Township and separated police officers. N.J.S.A. 47:1A-6. Specifically, there is insufficient evidence in the record confirming whether the Township possessed responsive records. Thus, the current Custodian must perform a complete search for responsive records. Should the current Custodian not locate any responsive records, she must certify this fact.

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's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian" N.J.S.A. 47:1A-7(b).
2. The Custodian unlawfully denied access to the portion of the Complainant's January 10, 2022 OPRA request seeking disclosable personnel information of separated police officers from 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 current Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.
3. The Custodian may have unlawfully denied access to the Complainant's OPRA request seeking any "agreement[s]" between the Township of Lyndhurst and separated police officers. N.J.S.A. 47:1A-6. Specifically, there is insufficient evidence in the record confirming whether the Township possessed responsive records. Thus, the current Custodian must perform a complete search for responsive records. Should the current Custodian not locate any responsive records, she must certify this fact.
4. **The Custodian shall comply with conclusion Nos. 2 & 3 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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
5. The Council defers analysis of whether the Complainant is a prevailing party pending the current Custodian's compliance with the Council's Interim Order.

⁶ 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.

⁷ "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."

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Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Lyndhurst Police Department (Bergen), 2022-68 – Findings and Recommendations of the Executive Director

Prepared By: Samuel A. Rosado
Staff Attorney

August 20, 2024