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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

June 24, 2025 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2023-48

v.

Berkeley Township Police Department (Ocean)
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 Custodian did not unlawfully deny access to the Complainant’s OPRA request item No. 1 because the Custodian certified that no such record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Township Clerk’s failure to locate records responsive to OPRA request item No. 2 until after receipt of the Denial of Access Complaint resulted in an insufficient search, causing the Custodian to unlawfully deny access to the records. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the GRC need not order disclosure of the records because the Custodian disclosed same to the Complainant on March 17, 2023.

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**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2023-48

v.

**Berkeley Township Police Department (Ocean)²
Custodial Agency**

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

1. “A list of all lawsuits and cases in which any officer of the police department was involved between 2017 and 2022. For each lawsuit/case, please provide the date (month and year) of the alleged incident at issue, whether the alleged incident was excessive force, settlement amount (if any), and final compensation amount ruled (if any).”
2. “Please provide copies of the complaint in any lawsuits and cases described above.”

Custodian of Record: Marcy Novellino

Request Received by Custodian: December 30, 2022

Responses Made by Custodian: January 11, 2023 and February 28, 2023

GRC Complaint Received: March 2, 2023

Background³

Request and Responses:

On December 30, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 11, 2023, the seventh (7th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that an extension of time would be required until February 28, 2023. On February 28, 2023, the Custodian responded to the Complainant, informing him that there are no records responsive to the request.

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Denial of Access Complaint:

On March 2, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).⁴ The Complainant asserted that he submitted his OPRA request on December 30, 2022, and the Custodian responded requesting an extension until February 28, 2023. The Complainant stated that on February 28, 2023, the Custodian notified him that there are no records responsive to his request. The Complainant stated, “I am aware of lawsuits during this period. I am attaching the first few pages of an excessive force complaint from 2017. There are more.”

The Complainant attached to the complaint the first five (5) pages of a twelve (12) page civil action allegedly filed in the U.S. District Court for the District of New Jersey by a plaintiff against personnel of the Berkeley Township Police Department.⁵

Supplemental Response:

On March 17, 2023, the Custodian disclosed to the Complainant records responsive to request item No. 2. On the same date, the Complainant e-mailed the Custodian informing her that Administrator John Camera was served in a lawsuit captioned Johnson v. Berkeley Township on July 1, 2022.

Statement of Information:

On March 23, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s request on December 30, 2022, and responded to the request as follows: “January 4, 2023⁶ extension, January 11, 2023 extension, February 28, 2023 response, March 17, 2023 response[.]”

The Custodian certified that there are no records responsive to request item No. 1. The Custodian certified that Berkeley Township (“Township”) “does not maintain a list of all lawsuits and cases in which any officer of the police department was involved”

The Custodian certified that with respect to request item No. 2, the Police Department does not maintain copies of lawsuits. The Custodian certified that copies of lawsuits are maintained by the Township, and therefore she promptly forwarded the Complainant’s request to Township Administration. The Custodian certified that she subsequently received a reply that there were no complaints between 2017 and 2022 and so notified the Complainant in the February 28, 2023 response.

⁴ The evidence of record reveals that the Complainant verified and e-mailed his complaint to the GRC and the Custodian on February 28, 2023 at 5:57 p.m.

⁵ The complaint contains no civil action number or docket number.

⁶ The evidence of record reveals that the January 4, 2023 communication was an internal e-mail, not a request for an extension of time.

The Custodian certified that after the Denial of Access Complaint was received, the Township Clerk forwarded to her 143 pages of records responsive to request item No. 2. The Custodian certified that the responsive records are:

- Berkeleystesner (13 pages)
- Krzeczowski (13 pages)
- Carrasquillo (14 pages)
- Carrasquillo settlement (5 pages)
- Laniado (31 pages)
- Giannattasio (16 pages)
- Giannattasio closing (12 pages)
- Bedell-Gille (10 pages)
- Ravino Johnson (29 pages)

The Custodian further certified that upon her receipt of the records she promptly forwarded them to the Complainant.⁷

The Custodian attached to the SOI e-mails dated January 4, 2023, January 11, 2023, February 28, 2023, March 1, 2023, and March 17, 2023. The Custodian also appended to the SOI the attachment to the March 17, 2023 e-mail, which consisted of 143 pages of records that were responsive to request item No. 2.

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.

OPRA request item No. 1

In Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified in the SOI that there are no records responsive to the request item and so notified the Complainant on February 28, 2023. Moreover, there is nothing in the

⁷ The evidence of record reveals that the Clerk’s Office forwarded the records to the Custodian on March 1, 2023, and the Custodian disclosed the records to the Complainant on March 17, 2023.

evidence of record to indicate that the Complainant submitted any evidence to contradict the Custodian's certification.

As such, the Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because the Custodian certified that no such record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Pusterhofer, GRC 2005-49.

OPRA request item No. 2

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. However, the complainant included e-mails responsive to the request with the Denial of Access Complaint. After receipt of the complaint, the custodian conducted a further search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records.

Here, the evidence of record reveals that the Custodian responded to the Complainant on February 28, 2023, informing him that there are no records responsive to his request. The Complainant filed a complaint later that same date asserting that there were indeed records responsive to request item No. 2. On the following day, March 1, 2023, the Clerk's Office forwarded 143 pages of records to the Custodian that were responsive to request item No. 2; however, the Custodian did not disclose these records to the Complainant until March 17, 2023.

Therefore, the Township Clerk's failure to locate records responsive to OPRA request item No. 2 until after receipt of the Denial of Access Complaint resulted in an insufficient search, causing the Custodian to unlawfully deny access to the records. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC need not order disclosure of the records because the Custodian disclosed same to the Complainant on March 17, 2023.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because the Custodian certified that no such record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Township Clerk's failure to locate records responsive to OPRA request item No. 2 until after receipt of the Denial of Access Complaint resulted in an insufficient search, causing the Custodian to unlawfully deny access to the records. N.J.S.A. 47:1A-6;

Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the GRC need not order disclosure of the records because the Custodian disclosed same to the Complainant on March 17, 2023.

Prepared By: John E. Stewart

June 17, 2025