



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 27, 2021 Government Records Council Meeting

Denix Rodriguez
Complainant

Complaint No. 2020-69

v.

Elizabeth Police Department (Union)
Custodian of Record

At the April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 2021 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 written response was legally insufficient because she failed to respond to each item contained in the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).
2. The Complainant’s request item Nos. 1 and 3 asking multiple questions regarding officer involvement in investigations and the information relayed back to Elizabeth Police Department are invalid under OPRA. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to these request items. N.J.S.A. 47:1A-6.
3. No unlawful denial of access occurred in the instant complaint. Specifically, the Custodian disclosed body-worn camera footage to the Complainant via U.S. mail on a compact disc. Further, Custodian was not given the opportunity to provide the records on a flash drive because the Complainant never indicated such prior to filing this complaint. See Carter v. Franklin Fire Dist. No. 1 (Somerset), 2019 N.J. Super. Unpub. LEXIS 590, 19 (App. Div. 2019). Thus, the Custodian borne her burden of proving that her actions were appropriate under OPRA. N.J.S.A. 47:1A-6.
4. The Custodian’s response was insufficient because she failed to address each individual OPRA request item. N.J.S.A. 47:1A-5(g). However, the Custodian lawfully denied access to request item Nos. 1 and 3 because they were invalid. Further, the Custodian acted appropriately in disclosing the responsive body-worn camera footage to the Complainant on a compact disc. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious



wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 27th Day of April 2021

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: April 29, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 27, 2021 Council Meeting**

**Denix Rodriguez¹
Complainant**

GRC Complaint No. 2020-69

v.

**Elizabeth Police Department (Union)²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S. mail of:

1. “[Have] any of the [three (3)] named detective(s) [] been a part of any *sort of investigation* and if so[,] what was the *result(s) of those investigations?*” (Emphasis in original).
2. Any and all video footage from the body-worn camera (“BWC”) on January 15, 2020.
3. “*What information was conveyed into the Elizabeth Police Dep[artment] [(“EPD”)] and/or*” the three (3) detectives? (Emphasis in original).

Custodian of Record: Yolanda M. Roberts
Request Received by Custodian: February 27, 2020
Response Made by Custodian: March 3, 2020
GRC Complaint Received: March 27, 2020

Background³

Request and Response:

On February 10, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 3, 2020, the Custodian responded in writing disclosing an investigation report (with redactions for personal information under N.J.S.A. 47:1A-1) and BWC footage on a compact disc (“CD”).

Denial of Access Complaint:

On March 27, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted the failed to respond to his OPRA request item Nos. 1 and 3. The Complainant also argued that the Custodian disclosed BWC footage on a CD, but he needed a “flash drive.”

¹ No legal representation listed on record.

² Represented by Samantha Castrelos, Esq. (Elizabeth, 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.

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Statement of Information:⁴

On March 9, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 27, 2020. The Custodian certified that her search included contacting EPD to search for an investigation report pertaining to the Complainant. The Custodian affirmed that upon locating said investigation report, EPD used it to locate responsive BWC footage. The Custodian certified that she responded in writing on March 3, 2020 disclosing the investigation report, with minor redactions for personally identifiable information, and a full copy of the BWC footage on a CD.

The Custodian contended that the Complainant’s OPRA request was invalid because it failed to identify a specific “government record.” MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012). The Custodian asserted that notwithstanding that the request was invalid, she was able to utilize the information contained therein to locate the investigation report and BWC footage. The Custodian thus contended that she disclosed all records that could be reasonably located and that locating any additional records would require her to conduct research and creation of records to answer questions.

Analysis

Sufficiency of Response

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. In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Here, the Custodian originally responded disclosing records in response to OPRA request item No. 2. The Complainant subsequently filed the instant complaint contending that the Custodian failed to respond to the other request items present in his OPRA request. The evidence of record here supports that the Custodian, in fact, did not address these request items at all; rather, she argued in the SOI that the request was invalid in its entirety. Thus, the Custodian’s initial response to the subject OPRA request were insufficient in accordance with Paff, GRC 2007-272.

As such, the Custodian’s written response was legally insufficient because she failed to respond to each item contained in the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff, GRC 2007-272. See also Lenchitz, 2012-265.

⁴ On June 25, 2020, this complaint was referred to mediation. On August 18, 2020, this complaint was referred back to the GRC for adjudication.

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, 381 N.J. Super. At 37;⁵ 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. 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).

Regarding requests asking questions, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the Council held that the complainant’s September 13, 2007, request seeking answers to five (5) questions regarding a property named the Villa Maria was invalid. *See also* Ohlson v. Twp. Of Edison (Middlesex), GRC Complaint No.

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004). Denix Rodriguez v. Elizabeth Police Department (Union), 2020-69 – Findings and Recommendations of the Executive Director

2007-233 (August 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012).

In the matter before the Council, The Complainant's request item Nos. 1 and 3 asked questions about three (3) officers' involvement in "any" investigations and what "information" those officers "conveyed" to the EPD. The items clearly ask questions and do not seek identifiable "government records." Thus, a finding that these items are invalid is on point with the Council's prior decision in Watt, GRC 2007-246 and its progeny.

Accordingly, the Complainant's request item Nos. 1 and 3 asking multiple questions regarding officer involvement in investigations and the information relayed back to EPD are invalid under OPRA. See MAG, 375 N.J. Super. At 546; Watt, GRC 2007-246. Thus, the Custodian lawfully denied access to these request items. 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:

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium.

[N.J.S.A. 47:1A-5(d).]

In Carter v. Franklin Fire Dist. No. 1 (Somerset), 2019 N.J. Super. Unpub. LEXIS 590 (App. Div. 2019),⁶ the Complainant appealed the Council's decision that he was not entitled to the responsive records in their "native electronic format" because, among other reasons, he failed to specify such in his OPRA request. In affirming this portion of the Council's decision, the Appellate Division noted that it was "fundamentally unfair for [the Complainant] to add a previously undescribed format to his requests after the [Custodian] had already produced documents in an appropriate electronic format." Id. at 19. The court noted that the Complainant's clarifying of the requests after disclosure prevented the Custodian from addressing them within the "native electronic format" perimeters.

In the matter before the Council, the Custodian disclosed, among other records, BWC footage to the Complainant on a CD. In his Denial of Access Complaint, the Complainant

⁶ On appeal from Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-137, *et seq.* (Final Decision dated January 31, 2017).

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confirmed that he received the CD, but that he needed the records on a “flash drive.” In the SOI, the Custodian argued that the Complainant never specified the format for the records sought. The Custodian noted that while the records would have normally been e-mailed to a requestor, she had to store them on a CD to mail to the Complainant’s facility.

Upon review of the above-mentioned facts, the GRC is persuaded that no unlawful denial of access occurred. The Custodian certified, and the Complainant confirmed, that she disclosed the responsive records to the Complainant on a CD. It should be noted that the Complainant did not indicate that he was seeking the responsive records on a specific type of data storage material. Instead, he only identifies in the subject OPRA request that he sought disclosure via U.S. mail. The evidence of record supports that the Custodian complied based on the wording of the subject OPRA request. That the Complainant posited in the Denial of Access Complaint that he needed the records on a flash drive instead of the CD is of no moment here. As instructively reasoned by the Carter court, it would be unfair to assume that the Custodian could have known that the Complainant sought disclosure via flash drive without any indication to that affect prior to this complaint filing.

Accordingly, no unlawful denial of access occurred in the instant complaint. Specifically, the Custodian disclosed BWC footage to the Complainant via U.S. mail on a CD. Further, Custodian was not given the opportunity to provide the records on a flash drive because the Complainant never indicated such prior to filing this complaint. See Carter, 2019 N.J. Super. Unpub. LEXIS 590. Thus, the Custodian borne her burden of proving that her actions were appropriate under OPRA. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA] and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, the Custodian's response was insufficient because she failed to address each individual OPRA request item. N.J.S.A. 47:1A-5(g). However, the Custodian lawfully denied access to request item Nos. 1 and 3 because they were invalid. Further, the Custodian acted appropriately in disclosing the responsive BWC footage to the Complainant on a CD. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's written response was legally insufficient because she failed to respond to each item contained in the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).
2. The Complainant's request item Nos. 1 and 3 asking multiple questions regarding officer involvement in investigations and the information relayed back to Elizabeth Police Department are invalid under OPRA. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to these request items. N.J.S.A. 47:1A-6.
3. No unlawful denial of access occurred in the instant complaint. Specifically, the Custodian disclosed body-worn camera footage to the Complainant via U.S. mail on a compact disc. Further, Custodian was not given the opportunity to provide the records on a flash drive because the Complainant never indicated such prior to filing this complaint. See Carter v. Franklin Fire Dist. No. 1 (Somerset), 2019 N.J. Super. Unpub. LEXIS 590, 19 (App. Div. 2019). Thus, the Custodian borne her burden of proving that her actions were appropriate under OPRA. N.J.S.A. 47:1A-6.
4. The Custodian's response was insufficient because she failed to address each individual OPRA request item. N.J.S.A. 47:1A-5(g). However, the Custodian lawfully denied access to request item Nos. 1 and 3 because they were invalid. Further, the Custodian acted appropriately in disclosing the responsive body-worn camera footage to the Complainant on a compact disc. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

April 20, 2021