



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

August 8, 2018

VIA E-MAIL

Susan Hewitson
Neptune City Police Department
106 West Sylvania Avenue
Neptune City, NJ 07753

RE: Owoh (O.B.O. AADRI) v. Neptune City Police Dep't (Monmouth),
GRC Complaint No. 2018-153

Dear Ms. Hewitson:

A Denial of Access complaint ("Complaint") alleging an unlawful denial of access to government records pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA") has been filed with the Government Records Council ("GRC") concerning an OPRA request that you or your staff handled. An offer to mediate this complaint has been denied by one or more of the parties, or mediation did not resolve this complaint.

The next step in the GRC's process requires you to complete the enclosed Statement of Information ("SOI"). You may seek assistance in completing the SOI from your attorney. However, you, as the Custodian, must sign the completed SOI. This SOI provides you an opportunity to respond to the Complaint and to provide any information and/or supporting documentation you want the GRC to consider in deciding this Complaint.

In the SOI, ensure that you provide a document index using the enclosed table format, all documents and information concerning the circumstances surrounding the alleged unlawful denial of access, and your legal analysis. The GRC requires that all SOIs be signed by the Custodian with a legal certification under penalty of perjury consistent with New Jersey Court Rules (the legal certification format is provided on the last page of the SOI form). **SOIs that are incomplete will be returned for completion, thus prolonging the adjudication process of the Complaint. THE GRC WILL ONLY RETURN AN INCOMPLETE SOI ONCE TO A RECORDS CUSTODIAN. If an SOI remains incomplete, the GRC will adjudicate the matter based only on information submitted in the Complaint.**

All custodians responding to denial of access complaints **must** provide a complete document index containing certain information pursuant to the New Jersey Superior Court decision in Paff v. NJ Dep't of Labor, 392 N.J. Super. 334 (App. Div. 2007). Additionally, this court decision requires custodians to indicate the details regarding (1) the search undertaken to satisfy the request, (2) the records retention and destruction schedules for the records responsive to the request, as well as (3) the last date on which documents that may have been responsive to the request were destroyed. Paff, 392 N.J. Super. at 341.

OPRA provides the GRC with the authority to require that a public agency produce documents to assist in the investigation of a complaint. OPRA states that the public agency has the burden of proving that the denial of access was lawful. OPRA specifically states in relevant part that "[a]t the request of the council, a public agency shall produce documents and ensure the attendance of witnesses with respect to the council's investigation of any complaint or the holding of any hearing." N.J.S.A. 47:1A-7(c)(emphasis

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added). OPRA also provides in relevant part that “. . . [t]he public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed . . .” N.J.S.A. 47:1A-6.

The SOI and all accompanying documentation must be submitted to the GRC no later than five (5) business days from receipt of this letter. A lack of response from you may result in the GRC adjudicating the matter based only on information submitted in the Complaint by the requestor of the records.

Please note that by signing this SOI, you are certifying that you are mailing the SOI to the GRC *and to the requestor of the records* simultaneously. Additionally, all correspondence you provide to the GRC must also be provided to the requestor of the records.

Please forward your submissions to:

Government Records Council
In Care of Frank F. Caruso
101 South Broad Street
PO Box 819
Trenton, New Jersey 08625-0819

Alternately, you may submit your SOI via:

Fax: (609) 633-6337

E-mail: Frank.Caruso@dca.nj.gov

If you have any questions regarding this matter, please contact the Case Manager at the telephone number or e-mail address listed below.

Sincerely,



Frank F. Caruso
Communications Specialist/Resource Manager
609-341-3479

Enclosure

cc: Rotimi Owoh, Esq., Complainant (VIA E-MAIL)

New Jersey Government Records Council Denial of Access Complaint

Please read these instructions before completing this form:

- This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002 under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- Please print or type your responses, and provide ALL information requested. Incomplete forms will delay processing. This form is available in downloadable format from the GRC web site at www.nj.gov/grc.
- Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- The GRC recommends that you keep a copy of this complaint for your own files.
- MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:
Government Records Council
PO Box 819
Trenton, NJ 08625-0819
Fax: (609) 633-6337
E-mail: grc@dca.state.nj.us

1. About the Requester of the Records:

Full Name: THE LAW OFFICE OF ROTIMI OWOH ON BEHALF OF AADARI

Mailing Address: 100 Overlook Drive, 2nd Floor, PO Box 2439

City: Princeton

State: NJ

ZIP 08540

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: 609-375-2775

Fax Number: 609-785-5623

E-Mail Address: rowohesq@comcast.net

If you are represented by an attorney in this matter, please provide:

Name: Rotimi Owoh, Esq.

Phone Number: same as above

Address: Same as above

Fax Number: same as above

E-mail Address: Same as above

If you are an attorney who requested records and are filing this complaint on behalf of a client, please state the client's name:
AFRICAN AMERICAN DATA AND RESEARCH INSTITUTE ("AADARI")

2. About the Custodian of Records:

Name of the public agency from which records were requested:

Name of custodian on whom records request was submitted:

Susan Hewitson

Telephone Number: 732-775-1298

E-Mail shewitson@neptunccitypolice.org

Name of custodian who denied records request
(if different from above):

same as above

Telephone Number:

E-Mail address (if used):

Denial of Access Complaint

3. About the Record Request:Date your records request was provided to the custodian: 7-24-2018Did you receive a reply to your request? Yes ☒ No ☐If so, state the date your request was denied: 7-24-2018Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint? ☐ ☐

Yes

Noxxx

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes ☐

Date: _____

Noxxx ☒

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

Noxxx ☒Yes ☐

If Yes, Docket Number: _____

4. Offer of Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation?

Yes ☐Noxxx ☒**5. Documents to submit with this Form:**D Complete the attached **Records Denied List** to describe the records to which you were denied access.

D Attach a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.

D Summarize the facts of this complaint by writing the content, time and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.D Provide any legal arguments, allegations or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.

D Sign the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm that:

- I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- The information I have provided is true to the best of my knowledge and belief;
- The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- I am simultaneously providing a copy of this complaint to the Custodian of Records.

ROTIMI OWOH, ESQ.

Signature (required)

7-28-2018

Date

Denial of Access Complaint

**New Jersey Government Records Council
Denial of Access Complaint - Detail Summary**

Use this form to summarize the content, time and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.

1. No conversations.
2. The request was sent via fax on 7-24-2018. **Exhibit 1**
3. **The Custodian of Records responded promptly on 7-24-2018. Exhibit 2.**
4. The custodian made item number 3 available.
5. However, custodian denied access to 1, 2 and 4 were denied. Custodian asked complainant to go to the court to get the records.
6. Complainant sent an email requesting reconsideration on 7-24-2018. **Exhibit 3.**
7. The custodian showed no interest in reconsidering.
8. This complaint is being filed because the custodian of records essentially denied access to item numbers 1, 2 and 3 of the OPRA request.
9. Other police departments in New Jersey have made the requested complaints available to complainant. **Exhibit 4.**
10. The GRC ruled in Rick Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 that summonses are subject to OPRA with necessary redactions. **See Exhibit 5.**
11. The Assignment Judge of Middlesex County also ruled that summonses and complaints are subject to disclosure under OPRA. See OR v. Carol Torres, Plainsboro Township, et al (MID-L-5752-16). **See Exhibit 6.**
12. The Records Retention and Disposal Schedule requires the agency to maintain copies of the requested records. **See Exhibit 7**
- 13.

Therefore, complainant requests GRC to compel compliance with the OPRA request and to award counsel fees.

**New Jersey Government Records Council
Denial of Access Complaint – Records Denied List**

Name of Complainant: LAW OFFICE OF ROTIMI OWOH ON BEHALF OF AADARI This is page of .

Please fill out this form describing the record (or portion of it) to which access has been denied, the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request
	See attached Exhibits 1 through 7.	See attached Exhibits 1 through 7.

EXHIBIT 1



AGENCY NAME HERE
OPEN PUBLIC RECORDS ACT REQUEST FORM
Agency Address
Agency Telephone Number & Fax Number
Agency e-mail address
Name of Agency Custodian



Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information - Please Print

First Name _____
E-mail Address _____ The Law Office of Rotimi Owoh
Mailing Address _____ 100 Overlook Drive, 2nd Floor
_____ P O Box 2439
City _____ Princeton, NJ 08540
Telephone _____ FAX _____
Preferred Delivery: Pick Up _____ US Mail _____ On-Site Inspect _____ Fax _____ E-mail _____
If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.
Signature Rotimi Owoh Date 7-16-18

Payment Information

Maximum Authorization Cost \$ _____
Select Payment Method
Cash _____ Check _____ Money Order _____
Fees: Letter size pages - \$0.05 per page
Legal size pages - \$0.07 per page
Other materials (CD, DVD, etc) -- actual cost of material
Delivery: Delivery / postage fees additional depending upon delivery type.
Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

** See attached request.*

AGENCY USE ONLY

AGENCY USE ONLY

AGENCY USE ONLY

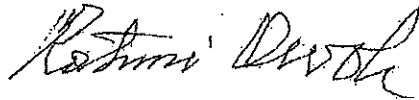
**Request on behalf of our client African American Data and Research Institute
(AADARI) pursuant to OPRA and Common law right of access**

1. Copies of DWI/DUI complaints, summonses and tickets that were prepared and filed by the Police Department from January of 2016 to the present.
2. Copies of drug possession complaints, summonses and tickets that were prepared and filed by the Police Department from January of 2016 to the present.
3. Copy or copies of the Police Department's "Arrest Listings." It is our understanding that the record includes: arrest number, date, name, sex, race, and offense. We request it from January of 2016 to the present.
4. Copies of drug paraphernalia complaints, summonses and tickets that were prepared and filed by the Police Department from January of 2016 to the present.

We have a common law right of interest to use the records as data for research.

We are willing to pay a reasonable fee for the requested records. Feel free to redact any confidential information from the requested records.

This request will be sent via email. Please respond in writing VIA EMAIL ONLY. Thank you.



Rotimi Owoh, Esq.

rowohesq@comcast.net

7-16-2018

EXHIBIT 2

Re: FW: OPRA request

Susan Hewitson <shewitson@neptunecitypolice.org>

10:45 AM

To: ROTIMI OWOH

1 Attachment View Open in browser Download

Attached please find the Neptune City Police Arrest listing as requested Item #3. Items 1, 2 and 4 should be requested through the Neptune City Municipal Court

If I can be of further assistance please let me know
Susan Hewitson
Neptune City Police
Administrative Assistant

On Tue, Jul 24, 2018 at 3:13 PM, ROTIMI OWOH <rowohesq@comcast.net> wrote:

I am forwarding a copy of the email that I sent to your municipal court. If you are NOT going to send items 1, 2 and 4 because you want me to request it from the municipal court, please let me know. Thank you.

R. Owoh, Esq.

----- Original Message -----

From: ROTIMI OWOH <rowohesq@comcast.net>
To: Tracey Sorrentino <tracey.sorrentino@njcourts.gov>
Date: July 24, 2018 at 3:04 PM
Subject: Re: FW: OPRA request

I received a blank form for New Jersey Judiciary. Please note that the OPRA request is for the Neptune City Clerk's Office and the Police Department. It is not for the Municipal Court. Please inform the Clerk and Police Department that I am not completing the attached form because I expect them to comply with the OPRA request. I know that OPRA does not apply to courts. Thank you.

R. Owoh, Esq.

On July 24, 2018 at 2:18 PM Tracey Sorrentino <tracey.sorrentino@njcourts.gov> wrote:

Tracey Sorrentino
Court Administrator
Neptune City Municipal Court
phone: (732) 775-1690

OPRA Request

Susan Hewitson <shewitson@neptunecitypolice.org>

2:56 PM 

To: rowohesq@comcast.net

I am in receipt of your OPRA request requesting records. I have forwarded your request to the Neptune City Court for all items regarding their office.

We are in the process of having the Monmouth County Sheriff's Office format a program to get the information from the NCPD that you have requested and will forward upon receipt.

Any questions, please call 732 775 1298 ext 14 or respond to this email

Susan Hewitson
Neptune City Police
Administrative Assistant



Neptune City Police Department

106 W Sylvania Ave NEPTUNE CITY, NJ 07753 (732)775-1615

Media Arrest Summary, by Name

Arrest Time/Date: 02:38:23 01/28/18

Booking Number: 18BK01344

Inmate Name: ABDELBAR, NADIA

Inmate Sex: F

Inmate Race: W

K

Name Number: 414594

Birth Date: REDACTED

Address: 7 HUCKLEBERRY WAY, BRICK TWP, NJ

Arrest Type: WAR

Arrested By: Cano, H

Agency: P35

Arrest Location: 35 / Steiner

Arrest Number: 18NCA0040

Related Incidents: 18NC00736

<u>Time/Date</u>	<u>Offense</u>	<u>Area</u>	<u>Statute</u>	<u>Court</u>	<u>Crime Class</u>
00:00:00 01/09/18	Warrant - Other	P35OI	2A:10-1C Other	1309	

Arrest Time/Date: 04:16:48 07/30/17

Booking Number: 17BK11214

Inmate Name: ABDELRAHIM,
KARIM N

Inmate Sex: M

Inmate Race: B

Name Number: 71990

Birth Date: REDACTED

Address: 311 W SYLVANIA AVE APT 201B, NEPTUNE CITY, NJ

Arrest Type: WAR

Arrested By: Holmstedt,

Agency: P35

T

Arrest Location: 106 W Sylvania Ave

Arrest Number: 17NCA0448

Related Incidents: 17NC07224

<u>Time/Date</u>	<u>Offense</u>	<u>Area</u>	<u>Statute</u>	<u>Court</u>	<u>Crime Class</u>
03:18:18 07/30/17	Contempt/Violate Court Order	P35	2C:29-9		

Arrest Time/Date: 04:29:38 07/30/17

Booking Number: 17BK11215

Inmate Name: ABDELRAHIM,
KARIM N

Inmate Sex: M

Inmate Race: B

Name Number: 71990

Birth Date: REDACTED

Address: 311 W SYLVANIA AVE APT 201B, NEPTUNE CITY, NJ

Arrest Type: ONV

Arrested By: Holmstedt,

Agency: P35

T

Arrest Location: 311 W Sylvania Ave

Arrest Number: 17NCA0449

Related Incidents: 17NC07223

<u>Time/Date</u>	<u>Offense</u>	<u>Area</u>	<u>Statute</u>	<u>Court</u>	<u>Crime Class</u>
03:18:18 07/30/17	Hinder Apprehension	P35	2C:29-3	1335	DP

Arrest Time/Date: 11:46:19 03/30/18		Booking Number: 18BK04444			
Inmate Name: ABDELRAHIM, KARIM N		Inmate Sex: M		Inmate Race: B	
Name Number: 71990		Birth Date: REDACTED			
Address: 311 W SYLVANIA AVE APT 201B, NEPTUNE CITY, NJ					
Arrest Type: WAR		Arrested By: Holmstedt, T		Agency: P35	
Arrest Location: 106 W Sylvania Ave		Arrest Number: 18NCA0127			
Related Incidents: 18NC02458, 18NC02459					
<u>Time/Date</u>	<u>Offense</u>	<u>Area</u>	<u>Statute</u>	<u>Court</u>	<u>Crime Class</u>
10:42:21 03/30/18	Warrant - Other	P35	2A:10-1C Other	1334	
10:42:00 03/30/18	Warrant - Local	P35	2A:10-1C Local	1335	

Arrest Time/Date: 20:00:08 09/13/16		Booking Number: 16BK13528			
Inmate Name: ABEL, GARRETT S		Inmate Sex: M		Inmate Race: W	
Name Number: 142951		Birth Date: REDACTED			
Address: 308 MONMOUTH RD, W LONG BRANCH, NJ					
Arrest Type: WAR		Arrested By: ZZ Jackson, Ry		Agency: P35	
Arrest Location: NCPD HQ		Arrest Number: 16NCA0544			
Related Incidents: 16NC07876					
<u>Time/Date</u>	<u>Offense</u>	<u>Area</u>	<u>Statute</u>	<u>Court</u>	<u>Crime Class</u>
**** **/**/**	Warrant - Other	P35P	2A:10-1C Other	1308	

Arrest Time/Date: 14:31:52 09/25/16		Booking Number: 16BK14103			
Inmate Name: ABEL, GARRETT S		Inmate Sex: M		Inmate Race: W	
Name Number: 142951		Birth Date: REDACTED			
Address: 308 MONMOUTH RD, W LONG BRANCH, NJ					
Arrest Type: ONV		Arrested By: Holmstedt, T		Agency: P35	
Arrest Location: Hwy 35 & Myron Ave		Arrest Number: 16NCA0569			
Related Incidents: 16NC08228					
<u>Time/Date</u>	<u>Offense</u>	<u>Area</u>	<u>Statute</u>	<u>Court</u>	<u>Crime Class</u>
**** **/**/**	Possession of CDS, Classified in Schedule I, II, III, or IV	P35	2C:35-10A(1)		3D
**** **/**/**	Possession of CDS, Classified in Schedule I, II, III, or IV	P35	2C:35-10A(1)		3D
**** **/**/**	Unlawful Possession/Other Weap	P35	2C:39-5D		
**** **/**/**	Use or possession with intent to use	P35	2C:36-2		DP

EXHIBIT 3

Fwd: FW: OPRA request

ROTIMI OWOH <rowohesq@comcast.net>

3:13 PM

To: Susan Hewitson

I am forwarding a copy of the email that I sent to your municipal court. If you are NOT going to send items 1, 2 and 4 because you want me to request it from the municipal court, please let me know. Thank you.

R. Owoh, Esq.

----- Original Message -----

From: ROTIMI OWOH <rowohesq@comcast.net>

To: Tracey Sorrentino <tracey.sorrentino@njcourts.gov>

Date: July 24, 2018 at 3:04 PM

Subject: Re: FW: OPRA request

I received a blank form for New Jersey Judiciary. Please note that the OPRA request is for the Neptune City Clerk's Office and the Police Department. It is not for the Municipal Court. Please inform the Clerk and Police Department that I am not completing the attached form because I expect them to comply with the OPRA request. I know that OPRA does not apply to courts. Thank you.

R. Owoh, Esq.

On July 24, 2018 at 2:18 PM Tracey Sorrentino <tracey.sorrentino@njcourts.gov> wrote:

Tracey Sorrentino

Court Administrator

Neptune City Municipal Court

phone: (732) 775-1690

fax: (732) 776-7842

From: Tracey Sorrentino

Sent: Tuesday, July 24, 2018 2:18 PM

To: rowohesq@comcast

Subject: OPRA request

Dear Mr. Owah,

7/24/2018

Re: FW: OPRA request

ROTIMI OWOH <rowohesq@comcast.net>

3:04 PM

To Tracey Sorrentino

I received a blank form for New Jersey Judiciary. Please note that the OPRA request is for the Neptune City Clerk's Office and the Police Department. It is not for the Municipal Court. Please inform the Clerk and Police Department that I am not completing the attached form because I expect them to comply with the OPRA request. I know that OPRA does not apply to courts. Thank you.

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On July 24, 2018 at 2:18 PM Tracey Sorrentino <tracey.sorrentino@njcourts.gov> wrote:

Tracey Sorrentino

Court Administrator

Neptune City Municipal Court

phone: (732) 775-1690

fax: (732) 776-7842

From: Tracey Sorrentino

Sent: Tuesday, July 24, 2018 2:18 PM

To: rowohesq@comcast

Subject: OPRA request

Dear Mr. Owah,

Please be advised that your OPRA request to the Neptune City Police Department was forwarded to my attention. Items 1, 2 and 3 are copies of materials that would be maintained by the municipal court. The Municipal Court is not bound by OPRA requests. I have attached the proper form that must be filled out before any consideration is given.

If you have any questions, please contact the court.

Tracey Sorrentino

Court Administrator

EXHIBIT 4



Det. Michael S. Zarro Jr.
Chief of Police



Philip Corbisiero
Captain

77 Sumnerhill Road
Spotswood, NJ 08884-1299

OPRA REQUEST

April 10, 2018

Dear Sir,

This communiqué is an official response to your OPRA request that was received by my office on 03/19/2018, as you recall there was additional clarifications needed which were addressed via electronic communication(s). The requested records are detailed below:

Item #1: (DRE) Rolling Log 01/2016-present; provided.

Item #2: are attached with its corresponding arrest reports.

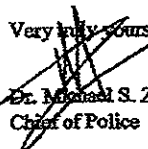
Item #3: are attached with corresponding arrest and complaints.

Item #4: same as above.

Item #5: same as above.

Item #6: contained within the corresponding arrest and complaints report forms included.

Very truly yours,



Det. Michael S. Zarro Jr.
Chief of Police



Borough of Helmetta
51 Main Street
Helmetta, New Jersey 08828
732 - 521 - 4946 ext. 100
732 - 605 - 9466 (fax)

Chris Slavicek
Mayor

Matthew Crane
Borough Administrator

Sandra Bohinski RMC, CMR
Municipal Clerk/Registrar,

April 11, 2012

TO: Rotimi Owoh, Esq.

FROM: Sandra Bohinski, RMC
Municipal Clerk

Sandra Bohinski

RE: OPRA REQUEST

In regards to your OPRA request as per the Helmetta Police Department:

1. The Helmetta Police Department does not have a Drug Recognition Expert (DRE) rolling log.
2. Since the Helmetta Police Department has no rolling log; therefore they have no copies of complaints.
3. Since the Helmetta Police Department has no rolling log, they have no copies of DRE complaints.

The rest of your requests are being sent to you.

OPRA 3014-18 - DRI Log (R Owoh)

Carmen Modica

3:15 PM

To rowohesq@comcast.net, Copy Kathleen Anello

2 attachments View Download

Dear Mr. Rotimi,

The Borough of Middlesex received your OPRA request on March 5, 2018. The Official Custodian of records, Kathleen Anello received your request on March 5, 2018. A request for extension of time until April 20, 2018, was submitted on March 13, 2018.

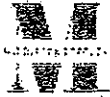
OPRA allows public agencies to impose special service charges whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or when fulfilling a request requires an extraordinary expenditure of time and effort. See N.J.S.A. 47:1A-5.c. Special service charges must be based upon the actual direct cost of providing the copy or copies.

OPRA mandates that the requestor shall have the opportunity to review and object to the charge prior to it being incurred. See N.J.S.A. 47:1A-5.c. As such, a detailed estimate is provided below:

<u>Description</u>	<u>Manhours</u>	<u>Amount (@ \$40/hour)</u>	<u>Service Required</u>
1) DRE Rolling Logs from January, 2016 to present Print	0.5		\$20.00
2) Copies of Complaints prepared relating to DRE Logs as mentioned in #1	1.0	\$40.00	Search, Redact, Review
3) Copies of DRE Reports from January, 2016 to present	0.5	\$20.00	Search, Print, Redact, Review
4) Copies of DWI/DUI Complaints from January, 2016 to present	18.0	\$720.00	Search, Print, Redact, Review
5) Copies of Drug Possession Complaints January, 2016 to present	18.0	\$720.00	Search, Print, Redact, Review
6) Copy of Arrest Listings from January, 2016 to Present	16.0	\$640.00*	Search, Print, Review
Approximately 290 pages of documents @ \$.05 per page			\$14.50

Kindly respond in writing with your acceptance or rejection of this estimated charge. We will not begin to process this request until we receive your written acceptance.

Regards,



Carmen Medica
Purchasing Agent
Administrative Assistant
732.356.7400 x237
732.356.7954

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Moorestown Police Department

Lee R. Lieber
Chief of Police

1245 N CHURCH ST. SUITES 2 & 3
MOORESTOWN, NJ 08057
EMERGENCIES DIAL 9-1-1
NON EMERGENCIES: 856-234-8388
POLICE ADMINISTRATION 856-233-1405
FAX: 856-235-0178

April 23, 2018

Law Office of Rotimi Owoh
100 Overlook Drive, 2nd Floor
PO Box 2439
Princeton, NJ 08540

Dear Mr. Owoh

The Moorestown Police Department received your Open Public Records Act (OPRA) on April 11, 2018. The Department Records Custodian received your OPRA clarified request on April 17, 2018. As such, the seven (7) business day deadline to respond to your request is April 25, 2018. This response to your request is being provided to you on the 4th business day after the custodian's receipt of said request.

Your OPRA request sought access to the following:

1. Drug Recognition Expert (DRE) Rolling Log from January of 2016 to the present.
2. Copies of complaints that were prepared by the Police Department relating to the DRE Rolling Logs mentioned in item #1 above. (This request is for records within the possession or access or control of the police department.)
3. Copies of DRE Reports prepared by the Police Department's DRE Officer(s) from January of 2016 to the present.
4. Copies of DWI/DUI complaints that were prepared and filed by the Police Department from January of 2016 to the present.
5. Copies of drug possession complaints that were prepared and filed by the Police Department from January 2016 to the present.
6. Copy or copies of the Police Department's "Arrest Listings." It is our understanding that the record includes: arrest number, date, name, sex, race, and offense. We request it from January of 2016 to the present.

Your request requires additional time beyond the seven (7) business days to fulfill because:

The documents requested on #4 and #5 are not available as readily available records, requiring significant time to identify, examine, redact, and convert to electronic medium as requested. OPRA allows custodians to seek extensions of time pursuant to N.J.S.A. 47:1A-5.i. Specifically, OPRA states that, "the requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied."

Your request requires an extension of time until May 2, 2018. Further note, in regard to documents requested in #1, #2, and #3 - no such records exist. In regard to question #6 - that information is available presently and can be forwarded now, or when the other documents are compiled.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Moorestown Police Department to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

Lt. Michael Maahs
Moorestown Police Department
mmahs@moorestownpd.com

EXHIBIT 5



**State of New Jersey
GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET
PO BOX 819

TRENTON, NJ 08625-0819

Toll Free: 866-850-0511

Fax: 609-633-6337

E-mail: grc@state.nj.us

Web Address:

www.nj.gov/grc

2003-110

- Final Decision
- Interim Decision on Access
- Supplemental Findings and Recommendations of the Executive Director
- Interim Order on Access
- Findings and Recommendations of the Executive Director

Final Decision

**Rick Merino,
Complainant**

**v.
Borough of Ho-Ho-Kus,
Custodian of Record**

Complaint No. 2003-110

At the July 8, 2004 public meeting, the Government Records Council ("Council") considered the June 29, 2004, Supplemental Findings and Recommendations of the Executive Director and all related documents submitted by the parties. As documented in a previously issued Interim Decision on Access, the Council voted unanimously to adopt items "2," "3" and "4" of said Findings and Recommendations. In item "1," the Executive Director recommended that the Council order the custodian to release to the complainant copies of all moving violation summonses issued by Officer Tuttle, without redacting the home addresses of the individuals to whom the summonses had been directed. After balancing the privacy interests of the individuals against the public interest in disclosure, a three-member majority of the five-member Council voted to reject the recommendation of the Executive Director on item "1," and hold, instead, that in the specific circumstances of this case, the home addresses should be redacted from the records provided to the complainant.

The majority of the Council concurred with the Background information contained in the June 29, 2004 Findings and Recommendations of the Executive Director, and the recommendation that the Council evaluate the request for release of home addresses in the framework of the seven-factor test articulated by the Supreme Court of New Jersey in *Doe v. Poritz*, 142 N.J. 1, 82 (1995). The Council also concurs with the identification of the relevant factors in the circumstances of this complainant's OPRA request. These elements of the Findings and Recommendation are hereby incorporated in this Final Decision.

With regard to the weighing of the factors, however, in the specific circumstances of this case, the majority of the Council reached a conclusion different from the Executive Director and the two members of the Council who voted to allow access to the home addresses. The Council received legal advice during the private session, and conducted extensive discussion of the matter during the public session. The Council considered whether or not the home addresses must be released pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., in the context of relevant judicial rulings, including the recognition that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." *Serrano v. South Brunswick Twp.*, 358 N.J. Super. 352, 368-69 (App. Div. 2003).

In addition, the New Jersey Supreme Court has indicated that, as a general matter, the public disclosure of an individual's home address "does implicate privacy interests." *Doe v. Poritz*, 142 N.J. 1, 82 (1995). The Court emphasized that even if a home address is otherwise available to the public, the circumstances in which the information is sought under OPRA requires the determination of whether the inclusion of addresses, along with other information, implicates any privacy interest. *Id.* at 83. Specifically, the Court stated that "privacy interests may be implicated where disclosure of a person's address results in unsolicited contact." *Id.* Moreover, the Court noted that a citizen surely has a privacy interest in past aspects of his or her history that may have been a matter of public knowledge, but have been obscured by the passage of time. *Id.* at 86-87.

Having found that privacy interests may be implicated by the release of home addresses to the public, the Supreme Court set forth factors to be considered when determining whether or not disclosure is warranted. Relevant considerations include, when applicable, (1) the type of record requested; (2) the information the record contains; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access. *Id.* at 87-88. When assessing whether or not the government must disclose information, the Court mandated a balancing of these factors to determine whether the state interest in public disclosure substantially outweighs the requestor's interest in privacy. *Id.* at 88.

In the circumstances of the complainant's OPRA request, the focus is on the express statutory mandate to liberally provide public access to government records, weighed against the potential for unsolicited contact between the complainant and the individuals who had received moving violation summonses from Officer Tuttle during the three years of his employment with the Ho-Ho-Kus Police Department. Since the complainant seeks the records in the context of his dissatisfaction with Officer Tuttle's conduct in issuing him a

moving violation summons, the majority of the Council finds it likely that release of the home addresses will result in unsolicited contact between the complainant and the individuals who previously received similar summonses. Moreover, many of the summonses in question were disposed of years ago, and the underlying motor vehicle infractions have faded into obscurity. Balancing the likelihood of unsolicited contact in this case against the public interest in open government records, the majority concluded that the privacy interest of the individuals, who are not parties to this action, outweighs the public interest in disclosure of the home addresses.

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.

Final Decision Rendered by the
Government Records Council
On The 8th Day of July, 2004

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Virginia Hook, Secretary
Government Records Council

[Return to Top](#)

Interim Decision on Access

Rick Merino,
Complainant
v.
Borough of Ho-Ho-Kus,
Custodian of Record

Complaint No. 2003-110

At the July 8, 2004 public meeting, the Government Records Council ("Council") considered the June 29, 2004 Executive Director's Supplemental Findings and Recommendations and all related documents submitted by the parties. The Council voted unanimously to adopt items "2," "3" and "4" of said findings and recommendations. By a majority, the Council voted not to accept the Executive Director's recommendations in item "1" of said findings and recommendations and will review its decision in this matter at the August 12, 2004 public meeting after seeking legal counsel. Therefore, the Council hereby orders that:

1. A special service charge for copying the videotape is not warranted in this case. The Custodian shall charge no more than the actual cost of the materials and supplies in duplicating the record excluding the labor cost.
2. The Custodian shall reimburse the Complainant for the difference in the cost determined in "1" and what the Complainant actually paid.
3. The Custodian is to reimburse the Complainant \$25 for the reproduction of the requested video.

Interim Decision Rendered by the
Government Records Council
On The 8th Day of 2004, 2004

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Virginia Hook, Secretary
Government Records Council

[Return to Top](#)

Supplemental Findings and Recommendations of the Executive Director

Rick Merino
Complainant
v.
Borough of Ho-Ho-Kus
Custodian of Records

GRC Complaint No. 2003-110

Relevant Records Requested: Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle. Complainant also accuses Custodian of overcharging for duplication/copying fees.
Custodian: Lieutenant John Wanamaker, Ho-Ho-Kus Police Department
Request Made: August 13, 2003; September 9, 2003
Response Made: August 26, 2003; September 15, 2003, September 29, 2003
GRC Complaint filed: October 6, 2003

Recommendations of the Executive Director

The Executive Director respectfully recommends the Council find that:

1. The requested addresses of moving violation summonses of Officer Tuttle should not have been redacted pursuant to the Open Public Records Act and balancing the privacy interest against the interest in disclosure.
2. A special service charge for copying the videotape is not warranted in this case. The Custodian shall charge no more than the actual cost of the materials and supplies in duplicating the record excluding the labor cost.

3. The Custodian shall reimburse the Complainant for the difference in the cost determined in "2" and what the Complainant actually paid.
4. The Custodian should provide access to the requested addresses of moving violation summonses and reimburse the Complainant \$25 for the reproduction of the requested video.

Background

The complaint alleges denial of an Open Public Records Act request to review copies of (1) all moving violations of Officer Michael Tuttle during his career with the Ho-Ho-Kus Police Department, including names and addresses of those cited; (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle. The Complainant also alleges that the custodian overcharged him for duplicating the requested records.

The record shows that the Custodian did provide access to moving violation summonses issued by Officer Tuttle. However, upon the advice of Borough counsel, the Custodian redacted the addresses of the individuals cited on those summonses.

The Custodian took the position that some citations, maintained beyond thirty days after disposition, issued by Officer Tuttle were not subject to public access because such records were not required to be kept pursuant to the Records Retention and Disposal Schedule promulgated by the Law Enforcement Standards Section of the New Jersey Division of Criminal Justice.

In addition, the Custodian denied access to Officer Tuttle's training records and records of complaints and internal reprimands against Officer Tuttle, claiming that such items were exempt under the confidentiality exceptions of OPRA.

The Custodian charged fees of \$64.25 for copying the requested materials (\$25.00 for copy of Incident videotape and \$39.25 for 27 double-sided photocopies).

At the March 11, 2004 public meeting, the Government Records Council ("Council") issued the following Interim Decision:

1. Notwithstanding the Records Retention and Disposition Schedule for summonses, if the Custodian does, in fact, possess records of summonses for any prior period that were issued and requested in the OPRA request, such records must be provided to the Complainant pursuant to the provisions of N.J.S.A. 47:1A-1 et. seq. Although the Records Retention and Disposition Schedule calls for the destruction of summonses within one month after disposition of the offense, if such records have not been destroyed, they remain subject to public access.
2. Training records of Officer Tuttle must be made available to the Complainant pursuant to N.J.S.A. 47:1A-10.
3. The Complainant's request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian pursuant to N.J.S.A. 47:1A-10.
4. Assuming that the number of pages provided to the Complainant was, in fact, 27 double-sided pages, the Complainant should be refunded \$18.25. The Complainant was charged \$64.25 (\$25.00 for a copy of a videotape and \$39.25 for 27 double-sided photocopies). The maximum fee for photocopies under OPRA (at N.J.S.A. 47:1A-5) and the fees listed by the Custodian on its document request form are identical (\$0.75 for the first ten pages, \$0.50 for the second ten pages, and \$0.25 for each page thereafter). The maximum allowable fee for 54 pages (i.e. 27 times 2) is, therefore, \$21.00. Accordingly, the Custodian must issue a refund to the Complainant in the amount of \$18.25.
5. The Council postponed its decision on whether the addresses and names were properly redacted on the documents pertaining to the prior month's moving violation summonses of Officer Tuttle for further review by the GRC's legal counsel.

Complainant:

The Complainant claims that the Custodian's Counsel should not have redacted the names and address of moving violations issued by Officer Tuttle. In addition, the Complainant represents that the cost for the copy of the video should be \$25.00.

Public Agency:

The Custodian redacted the names and addresses of moving violations issued by Officer Tuttle and set a special service fee for reproduction of a requested video. Regarding this second issue, the Custodian's Counsel informed the Government Records Council Executive Director that the copying charge for the video was \$50.00 and not \$25.00. In a March 17, 2004 memorandum, the Custodian stated that the \$50.00 fee represented the cost for a "discovery request" for video in preparation of a court matter involving the Complainant. The Custodian stated further "It took approximately 1 hour and a half for Lieutenant Wanamaker to reproduce the tape for Mr. Merino." Thus, the Custodian added a service charge to the production of the video.

Analysis

OPRA does not address whether home addresses must be disclosed. Although Executive Order 21 (2002) exempted home addresses from disclosure, this exemption was rescinded by Executive Order 26 (2002), which referred the issue to the Privacy Study Commission for its review. See para. 5. As a result, the confidentiality of home addresses under OPRA is an open issue. Therefore, the appropriateness of disclosure of this information must be considered on a case-by-case basis by the GRC, based on the privacy interests involved in the particular situation.

The Appellate Division has held that the GRC must enforce OPRA's declaration, in N.J.S.A. 47:1A-1, that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 368-69 (App. Div. 2003). See also National Archives and Records Administration v. Favish, U.S. (United States Supreme Court, March 30, 2004) (personal privacy interests are protected under FOIA). The New Jersey Supreme Court has indicated that, as a general matter, the public disclosure of an individual's home address "does implicate privacy interests." Doe v. Poritz, 142 N.J. 1, 82 (1995). [1] The Court specifically noted that such privacy interests are affected where disclosure of a person's address results in unsolicited contact. The Court quoted with approval a federal court decision which indicated that significant privacy concerns are raised where disclosure of the address "can invite unsolicited contact or intrusion based on the additional revealed information." Ibid. citing Aronson v. Internal Revenue Service, 767 F.Supp. 378, 389 n. 14 (D. Mass. 1991). The Supreme Court concluded that the privacy interest in a home address must be balanced against the interest in disclosure. It stated that the following factors should be considered:

1. The type of record requested;
2. The information it does or might contain;
3. The potential for harm in any subsequent nonconsensual disclosure;
4. The injury from disclosure to the relationship in which the record was generated;
5. The adequacy of safeguards to prevent unauthorized disclosure;
6. The degree of need for access;

7. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access [id. at 87-88].

Accordingly, the foregoing criteria was applied in exercising its discretion as to whether the privacy interests of the individuals named in the summonses are outweighed by any factors militating in favor of disclosure of the addresses.

The above factors were considered with the following conclusions:

1. Type of record request: Moving violation summonses
2. The information it contains: Name, address, driver license, license plate number, type of violation and birth date.
3. The potential for harm in any subsequent nonconsensual disclosure: Possible unsolicited contact, embarrassment
4. The injury from disclosure to the relationship in which the record was generated: None
5. The adequacy of safeguards to prevent unauthorized disclosure: None
6. The degree of need for access: Do not know
7. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access [id. at 87-88]: OPRA

After careful consideration of all the interests at stake, the privacy concerns do not outweigh OPRA's general policy favoring public access. In arriving at this conclusion, the GRC considered the potential harm of unsolicited contact and emotional strain placed on those individuals affected by this decision. In addition, the Legislature provided the Open Public Records Act to allow for readily available access to public documents by citizens of this State. Balancing the severity of the concerns and the public's right to access under OPRA, the Borough of Madison should allow public access to these addresses.

In regard to the second issue, the Borough of Madison charged a special service charge in its production of the requested video. Pursuant to N.J.S.A. 47:1A-5,

The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of lab or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. If a public agency can demonstrate that its actual cost for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record.

N.J.S.A. 47:1A-5 (c) addresses the issue of a special service charge. In this specific case, the production of this video took neither an extraordinary expenditure of time nor an extraordinary effort to furnish to the Complainant. In addition, the Custodian provided no reason that equipment outside of the ordinary document copying equipment was needed to reproduce the video. As a result, the Custodian has never demonstrated the need for assessing a special service fee for production of this video.

Documents Reviewed

The following documents were reviewed in preparing the Supplemental Findings and Recommendations for this case:

March 11, 2004 - Interim Decision by GRC

March 22, 2004 - Response by Custodian regarding the cost of producing the requested video

May 10, 2004 - Response to this case by Assistant Attorney General Lewis Scheindlin

Conclusion

Based on the Department of Law and Public Safety's balancing test recommendation, the Custodian should not have redacted the addresses of those individuals cited in the requested moving violations. Furthermore, the Custodian improperly assessed a special service charge for the reproduction of this video. The Custodian should reimburse the Complainant \$25.00.

Paul F. Dice
Executive Director
Government Records Council

June 29, 2004

[1] This case upheld the validity of Megan's Law and concluded that the public interest in disclosure of sex offender addresses outweighed privacy interests. Although not an OPRA case, the general standards announced by the Supreme Court are helpful and pertinent in evaluating OPRA's expectation of privacy requirement with regard to addresses.

[Return to Top](#)

Interim Order on Access

Rick Merino
Complainant
v.
Borough of Ho-Ho-Kus
Custodian of Record

Complaint No. 2003-110
Decision Issued: March 11, 2004
Decision Effective: March 15, 2004

At its March 11, 2004 public meeting, the Government Records Council ("Council") considered the March 11, 2004 Findings and Recommendations of Executive Director and all related documentation submitted by the parties. The Council voted to adopt said Findings and Recommendations with revisions and orders the custodian to:

1. Notwithstanding the Records Retention and Disposition Schedule for summonses, if the Custodian does, in fact, possess records of summonses for any prior period that were issued and requested in the OPRA request, such records must be provided to the Complainant pursuant to the provisions of N.J.S.A. 47:1A-1 et. seq. Although the Records Retention and Disposition Schedule calls for the destruction of summonses within one month after disposition of the offense, if such records have not been destroyed, they remain subject to public access.

2. Training records of Officer Tuttle must be made available to the Complainant pursuant to N.J.S.A. 47:1A-10. Personnel records that "disclose conformity with specific experiential, educational or medical qualifications required for government employment" shall be considered a government record and must be made available for public access.
3. 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 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 added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.
4. Assuming that the number of pages provided to the Complainant was, in fact, 27 double-sided pages, the Complainant should be refunded \$18.25. The Complainant was charged \$64.25 (\$25.00 for a copy of a videotape and \$39.25 for 27 double-sided photocopies). The maximum fee for photocopies under OPRA (at N.J.S.A. 47:1A-5) and the fees listed by the Custodian on its document request form are identical (\$0.75 for the first ten pages, \$0.50 for the second ten pages, and \$0.25 for each page thereafter). The maximum allowable fee for 54 pages (i.e. 27 times 2) is, therefore, \$21.00. Accordingly, the Custodian must issue a refund to the Complainant in the amount of \$18.25.

The Council will postpone its decision on whether the addresses and names were properly redacted on the documents pertaining to the prior month's moving violation summonses of Officer Tuttle for further review by the GRC's legal counsel. A decision on this matter will be addressed at the March 30, 2004 Government Records Council Meeting.

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Virginia Hook, Secretary
Government Records Council

[Return to Top](#)

Findings and Recommendations of the Executive Director

Rick Merino
Complainant
v.
Borough of Ho-Ho-Kus
Custodian of Records

GRC Complaint No. 2003-110

Relevant Records Requested: Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department; (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle. Complainant also accuses Custodian of overcharging for duplication/copying fees.
Custodian: Lieutenant John Wenamaker, Ho-Ho-Kus Police Department
Request Made: August 13, 2003; September 9, 2003
Response Made: August 26, 2003; September 15, 2003; September 29, 2003
GRC Complaint filed: October 6, 2003

Recommendations of Acting Executive Director

This OPRA complaint filed October 6, 2003 alleges denial of an OPRA request to review copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, including names and addresses of those cited (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle. The Complainant also alleges that the custodian overcharged him for duplicating the requested records.

The record shows that the Custodian did provide access to the prior month's moving violation summonses issued by Officer Tuttle; however, upon the advice of Borough counsel, the Custodian redacted the addresses of the individuals cited on those summonses.

Moreover, the Custodian took the position that earlier citations issued by Officer Tuttle were not subject to public access because such records were not required to be kept pursuant to the Records Retention and Disposal Schedule promulgated by the Law Enforcement Standards Section of the New Jersey Division of Criminal Justice.

In addition, the Custodian denied access to Officer Tuttle's training records and records of complaints and internal reprimands against Officer Tuttle, claiming that such items were exempt under the confidentiality exceptions of OPRA.

The Custodian charged fees of \$64.25 for copying the requested materials (\$25.00 for copy of Incident videotape and \$39.25 for 27 double-sided photocopies).

The Acting Executive Director respectfully recommends the Council find that:

1. The prior month's moving violation summonses of Officer Tuttle were improperly redacted and must be provided to the Complainant, including the addresses of those persons cited. Counsel for the Borough erred in advising the Custodian to redact such information. Absent a stated reason for redactions, we find that addresses are disclosable under OPRA.
2. Notwithstanding the Records Retention and Disposition Schedule for summonses, if the Custodian does, in fact, possess records of summonses for any prior period that were issued and requested in the OPRA request, such records must be provided to the Complainant pursuant to the provisions of N.J.S.A. 47:1A-1 et. seq. Although the Records Retention and Disposition Schedule calls for the destruction of summonses within one month after disposition of the offense, if such records have not been destroyed, they remain subject to public access.
3. a. The training records of Officer Tuttle must be made available to the Complainant pursuant to N.J.S.A. 47:1A-10. Personnel records that "disclose conformity with specific experiential, educational or medical qualifications required for government employment" shall be considered a government record and must be made available for public access.
b. 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 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 added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

4. Assuming that the number of pages provided to the Complainant was, in fact, 27 double-sided pages, the Complainant should be refunded \$18.25. The Complainant was charged \$64.25 (\$25.00 for a copy of a videotape and \$39.25 for 27 double-sided photocopies). The maximum fee for photocopies under OPRA (at N.J.S.A. 47:1A-5) and the fees listed by the Custodian on its document request form are identical (\$0.75 for the first ten pages, \$0.50 for the second ten pages, and \$0.25 for each page thereafter). The maximum allowable fee for 54 pages (i.e. 27 times 2) is, therefore, \$21.00. Accordingly, the Custodian must issue a refund to the Complainant in the amount of \$18.25.

Legal Analysis

N.J.S.A. 47:1A-1.1 provides that certain types of personal information shall be exempt from public access, including social security numbers, driver's license numbers, credit card numbers and unlisted telephone numbers. The custodian has not asserted any argument for redaction of addresses from the requested summonses.

N.J.S.A. 47:1A-5(a) provides that the "custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular working hours," subject to certain redaction provisions. Hence, irrespective of whether some other law or regulation mandates the destruction of a government document, if such document has not been destroyed and is in the possession of the custodian, such record must be provided to the person requesting the document.

N.J.S.A. 47:1A-10 provides that personnel records that "disclose conformity with specific experiential, educational or medical qualifications required for government employment" shall be considered a government record and must be made available for public access. Hence, training records relating to a police officer's public employment as a law enforcement official would be subject to public access.

N.J.S.A. 47:1A-10 provides in pertinent 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." As a result, neither complaints filed against a police officer, nor reprimands issued to such officer, would be subject to public access.

N.J.S.A. 47:1A-5 provides that the maximum fees for copying shall be \$0.75 for the first ten pages, \$0.50 for the second ten pages, and \$0.25 for each page thereafter. The proper fee for 27 double-sided pages is, therefore, \$21.00.

Documents Reviewed

The following documents were reviewed in preparing the Findings and Recommendations for this case:

- August 6, 2003 - Copy of motor vehicle summons received by Complainant
- August 13, 2003 - Complainant's request for records
- August 15, 2003 - Complainant filed a request at the Police Department
- August 26, 2003 - Correspondence from Custodian to Complainant concerning denial of access to certain records
- September 9, 2003 - Complainant's request for additional records
- September 15, 2003 - Correspondence from Custodian to Complainant concerning Complainant's 9/9/03 request for additional information
- September 29, 2003 - Correspondence from Custodian to Complainant concerning redaction of certain records
- October 6, 2003 - Denial of Access Complaint Filed
- January 9, 2004 - Offer of Mediation sent to both parties
- January 13, 2004 - Letter from Custodian's counsel agreeing to mediation
- January 29, 2004 - Statement of Information form sent to Custodian
- February 13, 2004 - Custodian's Statement of Information with supplementary materials

Conclusion

1. The prior month's moving violation summonses of Officer Tuttle were improperly redacted and must be provided to the Complainant, including the addresses of those persons cited. Counsel for the Borough erred in advising the Custodian to redact such information. Absent a stated reason for redactions, we find that addresses are disclosable under OPRA.
2. Notwithstanding the Records Retention and Disposition Schedule for summonses, if the Custodian does, in fact, possess records of summonses for any prior period that were issued and requested in the OPRA request, such records must be provided to the Complainant pursuant to the provisions of N.J.S.A. 47:1A-1 et. seq. Although the Records Retention and Disposition Schedule calls for the destruction of summonses within one month after disposition of the offense, if such records have not been destroyed, they remain subject to public access.
3. a. The training records of Officer Tuttle must be made available to the Complainant pursuant to N.J.S.A. 47:1A-10. Personnel records that "disclose conformity with specific experiential, educational or medical qualifications required for government employment" shall be considered a government record and must be made available for public access.
b. 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 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 added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.
4. Assuming that the number of pages provided to the Complainant was, in fact, 27 double-sided pages, the Complainant should be refunded \$18.25. The Complainant was charged \$64.25 (\$25.00 for a copy of a videotape and \$39.25 for 27 double-sided photocopies). The maximum fee for photocopies under OPRA (at N.J.S.A. 47:1A-5) and the fees listed by the Custodian on its document request form are identical (\$0.75 for the first ten pages, \$0.50 for the second ten pages, and \$0.25 for each page thereafter). The maximum allowable fee for 54 pages (i.e. 27 times 2) is, therefore, \$21.00. Accordingly, the Custodian must issue a refund to the Complainant in the amount of \$18.25.

Paul F. Dice
Acting Executive Director
Government Records Council

[Return to Top](#)

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EXHIBIT 6



PARKER McCAY

Parker McCay P.A.
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900
F: 856.596.9631
www.parkermccay.com

George M. Morris, Esquire
Direct Phone: 856-810-5855
Direct Fax: 856-494-1760
gmorris@parkermccay.com

September 15, 2017

File No. 17076-0022

Send via Overnight Delivery
Mr. Rotimi A. Owoh, Esquire
Law Office of Rotimi A. Owoh
100 Overlook Drive, 2nd Floor
Princeton, NJ 08540

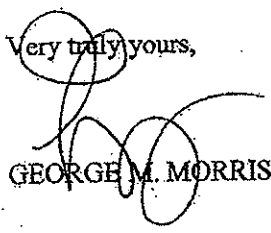
Re: Plainsboro - Obafemi, Or v. Plainsboro Twp., et al
Docket No. MID-L-005752-16

Dear Mr. Owoh:

Pursuant to the Court's August 22, 2017, please find a check in the amount of \$6,726.45.

This completes the municipality's responsibilities and obligations under the Order.

Very truly yours,


GEORGE M. MORRIS

Enclosure

cc: Carol J. Torres Township Clerk/Registrar (via email)
Michael W. Herbert, Esq. (via email)

COUNSEL WHEN IT MATTERS.SM

Mount Laurel, New Jersey | Lawrenceville, New Jersey | Atlantic City, New Jersey



PARKER McCAY

Parker McCay P.A.
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Direct Phone: 856-810-5855
Direct Fax: 856-494-1760
gmorris@parkermccay.com

January 26, 2018

File No. 17076-0022

Sent via Overnight Delivery
Mr. Rotimi A. Owoh, Esquire
Law Office of Rotimi A. Owoh
100 Overlook Drive, 2nd Floor
Princeton, NJ 08540

Re: Plainsboro - Obafemi, Or v. Plainsboro Twp., et al
Docket No. MID-L-005752-16

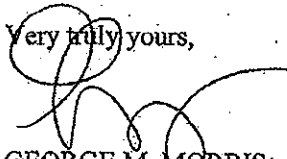
Dear Mr. Owoh:

Pursuant to the December 1, 2017 Order of the Court received by this Office on January 4, 2018, enclosed please find a check in the amount of \$2,760.00.

We believe this resolves all outstanding issues in this litigation. To that end, please execute the attached Stipulation of Dismissal and return to my office for filing with the Court.

Thank you.

Very truly yours,


GEORGE M. MORRIS

Enclosure

cc: Ms. Carol J. Torres Township Clerk/Registrar

COUNSEL WHEN IT MATTERS.™

Mount Laurel, New Jersey | Lawrenceville, New Jersey | Atlantic City, New Jersey

EXHIBIT 7

Records Retention and Disposition Schedule						Agency: M900000		Schedule: 006		Page #:15 of 21	
Record Series #	Record Title and Description	Confidential	Vital Record	Archival Review	Alternate Media	Audit	Total Retention Period	Retention Policy Minimum Period in Agency	Disposition	Citation	
0077-0000	Speedometer Calibration A file on accuracy of police speedometers.						2 Years		Destroy		
0078-0000	Statistical Crime Reports Monthly computer printout reports on criminal activity within the municipality by time, area, and/or event. This information is incorporated into the annual departmental report.						3 Years		Destroy		
Statistical Traffic Reports											
0079-0001	Statistical Traffic Reports (Record Copy) Annual statistical reports on traffic accidents.						5 Years		Destroy		
0079-0002	Statistical Traffic Reports (Duplicates) Annual statistical reports on traffic accidents.						1 Years		Destroy		
0080-0000	Stolen/Recovered Bicycle Cards List type (boys/girls), size, color, brand, where stolen/recovered, owner, value, date, and serial number.						2 Years		Destroy		
0081-0000	Subpoena Log Contains: name of defendant, officer, issuing authority, court dates, received, date notified, and signature.						1 Years After final entry		Destroy		
0082-0000	Summonses (Copy) Record copy is maintained by the municipal court.						30 Days After disposition		Destroy		

Records Retention and Disposition Schedule									
Record Series #	Record Title and Description	Agency: M9000000					Schedule: 006		Page #: 2 of 21
		Audit	Alternate Media	Archival Review	Vital Record	Confidential	Total Retention Period	Minimum Retention Period in Agency	
0005-0000	Applicants Log Book Lists: name, date, and reason-employment or licensing, excluding firearms. Fingerprint fee is involved.	X					3 Years After final entry		Destroy
0006-0000	Arrest Card File Lists: name, address, date of birth, social security number, fingerprints, photograph, dates of arrest, FBI number, SBI number, arrest number, offense number, and complaint number of all persons arrested.	X					75 Years		Destroy
0007-0000	Arrest File (Copy) Copy of arrest report, including: copies of fingerprints, mug shots, negative, and state and federal rap sheets.						Until final disposition of case		Destroy
0008-0000	Arrest Listings								
0008-0001	Arrest Listings Lists: arrest number, date, name, sex, race, and offense.						1 Years After final entry		Destroy
0008-0002	Juvenile Fingerprint and Picture Listings Lists: date, charge, and assigned number of printed and photographed juveniles.						5 Years After all juveniles assigned numbers have reached age of majority		Destroy
0009-0000	Assigned Investigation Listings Lists who is assigned to an investigation, complaint number, date assigned, location, type of incident, and date report was completed.						1 Years After final entry		Destroy

Caruso, Frank

From: ROTIMI OWOH <rowohesq@comcast.net>
Sent: Saturday, July 28, 2018 2:04 PM
To: Government Records Council
Subject: GRC COMPLAINT O/B/O AADARI V. NEPTUNE CITY - 1 OF 2 EMAILS
Attachments: nepcitygrc.pdf; nepcitygrcexh1-2.pdf; nepcitygrcexh3-4.pdf
Categories: Red Category

1 OF 2 EMAILS. See attached complaint. Thank you.

R. Owoh, Esq.

Caruso, Frank

From: ROTIMI OWOH <rowohesq@comcast.net>
Sent: Saturday, July 28, 2018 2:07 PM
To: Government Records Council
Subject: GRC COMPLAINT O/B/O AADARI V. NEPTUNE CITY -- 2 OF 2 EMAILS
Attachments: nepcitygrcexh5-7.pdf

Categories: Red Category

2 OF 2 EMAILS. Please find attached complaint.

R. Owoh, Esq.



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

August 8, 2018

VIA E-MAIL

Susan Hewitson
Neptune City Police Department
106 West Sylvania Avenue
Neptune City, NJ 07753

RE: Owoh (O.B.O. AADRI) v. Neptune City Police Dep't (Monmouth),
GRC Complaint No. 2018-153

Dear Ms. Hewitson:

A Denial of Access complaint ("Complaint") alleging an unlawful denial of access to government records pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA") has been filed with the Government Records Council ("GRC") concerning an OPRA request that you or your staff handled. An offer to mediate this complaint has been denied by one or more of the parties, or mediation did not resolve this complaint.

The next step in the GRC's process requires you to complete the enclosed Statement of Information ("SOI"). You may seek assistance in completing the SOI from your attorney. However, you, as the Custodian, must sign the completed SOI. This SOI provides you an opportunity to respond to the Complaint and to provide any information and/or supporting documentation you want the GRC to consider in deciding this Complaint.

In the SOI, ensure that you provide a document index using the enclosed table format, all documents and information concerning the circumstances surrounding the alleged unlawful denial of access, and your legal analysis. The GRC requires that all SOIs be signed by the Custodian with a legal certification under penalty of perjury consistent with New Jersey Court Rules (the legal certification format is provided on the last page of the SOI form). **SOIs that are incomplete will be returned for completion, thus prolonging the adjudication process of the Complaint. THE GRC WILL ONLY RETURN AN INCOMPLETE SOI ONCE TO A RECORDS CUSTODIAN. If an SOI remains incomplete, the GRC will adjudicate the matter based only on information submitted in the Complaint.**

All custodians responding to denial of access complaints **must** provide a complete document index containing certain information pursuant to the New Jersey Superior Court decision in Paff v. NJ Dep't of Labor, 392 N.J. Super. 334 (App. Div. 2007). Additionally, this court decision requires custodians to indicate the details regarding (1) the search undertaken to satisfy the request, (2) the records retention and destruction schedules for the records responsive to the request, as well as (3) the last date on which documents that may have been responsive to the request were destroyed. Paff, 392 N.J. Super. at 341.

OPRA provides the GRC with the authority to require that a public agency produce documents to assist in the investigation of a complaint. OPRA states that the public agency has the burden of proving that the denial of access was lawful. OPRA specifically states in relevant part that "[a]t the request of the council, a public agency shall produce documents and ensure the attendance of witnesses with respect to the council's investigation of any complaint or the holding of any hearing." N.J.S.A. 47:1A-7(c)(emphasis

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added). OPRA also provides in relevant part that “. . . [t]he public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed . . .” N.J.S.A. 47:1A-6.

The SOI and all accompanying documentation must be submitted to the GRC no later than five (5) business days from receipt of this letter. A lack of response from you may result in the GRC adjudicating the matter based only on information submitted in the Complaint by the requestor of the records.

Please note that by signing this SOI, you are certifying that you are mailing the SOI to the GRC *and to the requestor of the records* simultaneously. Additionally, all correspondence you provide to the GRC must also be provided to the requestor of the records.

Please forward your submissions to:

Government Records Council
In Care of Frank F. Caruso
101 South Broad Street
PO Box 819
Trenton, New Jersey 08625-0819

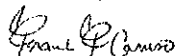
Alternately, you may submit your SOI via:

Fax: (609) 633-6337

E-mail: Frank.Caruso@dca.nj.gov

If you have any questions regarding this matter, please contact the Case Manager at the telephone number or e-mail address listed below.

Sincerely,



Frank F. Caruso
Communications Specialist/Resource Manager
609-341-3479

Enclosure

cc: Rotimi Owoh, Esq., Complainant (VIA E-MAIL)