

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1210-21**

**ROTIMI OWOH, o/b/o
AFRICAN AMERICAN DATA
AND RESEARCH
INSTITUTE, and BAFFI
SIMMONS,**

Plaintiffs-Respondents,

v.

CITY OF CAMDEN,

Defendant-Appellant.

Argued March 7, 2023 – Decided April 20, 2023

Before Judges Geiger, Susswein, and Berdote Byrne.

On appeal from the New Jersey Department of
Community Affairs, Government Records Council,
GRC Complaint Nos. 2018-291 and 2018-306.

Voris M. Tejada argued the cause for appellant
(Capehart & Scatchard, PA, attorneys; Lauren E.
Tedesco, on the briefs).

Rotimi A. Owoh argued the cause for respondents.

Debra A. Allen, Deputy Attorney General, argued the cause for respondent Government Records Council (Mathew J. Platkin, Attorney General, attorney; Debra A. Allen, on the statement in lieu of brief).

PER CURIAM

In this appeal from a Government Record Council (GRC) order compelling the City of Camden to produce Camden County Police records pursuant to the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and common law right of access, the City of Camden urges reversal and argues requestor did not serve the requests on the proper party. We agree and reverse.

In 2013, the City of Camden's (City) police force was disbanded, and policing services were taken over by the County of Camden (the County). The City entered into a Police Services Agreement (PSA) with the County on May 1, 2013. The PSA provided "the County of Camden has established a County Police Department," and "the County shall assume day to day responsibilities for all facets of uniformed law enforcement activities" for the City. The PSA noted "it is specifically understood that [the PSA] is not a merger of the County and City Police Department[s]."

The PSA provided:

[t]he County shall have full powers of performance and maintenance of the police coverage and protection services and full powers to undertake any ancillary police operations necessary or convenient to carry out its duties, obligations and responsibilities under this Agreement, including all powers of enforcement of administrative regulations applicable in the City of Camden.

The PSA further states:

All additional property and documents identified in Schedule "G" owned by the City of Camden are hereby licensed to the County for the purposes of this Agreement. The County is not responsible for storage and or maintenance of records and or evidence that are not a part of the County Police Department.

Schedule "G" listed the property and documents to be transferred or leased to the County including:

- I. All police records/files, to include Investigation Reports, Arrest Reports, Property Reports, Accident Reports, and General Investigation Reports.
- II. All files related to Domestic Violence Reports, and classified Sex Offender Reports.
- III. All Evidence Reports and Property, investigatory/crime scene equipment, including, without limitation, fingerprint kits, cards, pads, etc.
- IV. Law enforcement manuals, books, regulations, guidelines, etc.
- V. All police-related equipment listed in Schedule G (police equipment inventory).

On November 14, 2018, requestor Rotimi Owoh, on behalf of the African American Data and Research Institute (AADRI), served an OPRA request upon the City of Camden seeking:

1. Copies of DWI/DUI complaints and summonses that were prepared by your Police Department from January of 2017 to the present.
2. Copies of drug possession complaints and summonses that were prepared by your Police Department from January of 2017 to the present.
3. Copy or copies of the Police Department's "Arrest Listings[]" . . . from January of 2017 to the present.
4. Copies of drug paraphernalia complaints and summonses that were prepared by your Police Department from January of 2017 to the present.

On November 15, 2018, the City responded to Owoh's OPRA request in writing via email stating "[i]n regards to your recently submitted OPRA request, the City does not maintain the requested information." The City advised requestor the proper entity to contact for the desired information was Camden County, and the City provided requestor with the appropriate County phone number.

On November 23, 2018, requestor allegedly filed another OPRA request with the City, which the City maintains it never received. The denial of the

second OPRA request is not being appealed by either party. On November 26, 2018, requestor filed a denial of access complaint with the GRC. The complaint alleged the City unlawfully denied access to the records sought in the November 14, 2018, OPRA request. Requestor also filed a second denial of access complaint regarding his November 23, 2018, request.

On January 8, 2019, the City filed a consolidated statement of information (SOI) with the GRC. In the SOI, the City maintained it was not the custodian of records or data sought in the request, the records were not kept or maintained by City of Camden, and the appropriate record custodian was Camden County.

On October 27, 2020, the Executive Director of the GRC issued findings and recommendations concerning the two denial of access complaints. The GRC issued an interim order fully adopting the findings and recommendations of the Executive Director. Regarding the November 14, 2018, OPRA request, the GRC ruled the City unlawfully denied access to Owoh and directed the City to obtain responsive records from the County and provide them to Owoh. The GRC found the City never received the November 23, 2018, OPRA request and did not unlawfully deny access to the same.

The GRC relied on a combination of published case law and GRC decisions from previous denial of access cases. It cited Bent v. Twp. of Stafford

Police Dep't, 381 N.J. Super. 30 (App. Div. 2005) and Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), as well a GRC decision.¹ Relying primarily on Burnett and administrative holdings, the GRC ruled because the County made the records on behalf of the City, the record custodian for the City was obligated to retrieve and produce them to requestor.

On November 16, 2020, the City filed a request for reconsideration of the GRC's Interim Order. By interim order dated February 23, 2021, the GRC denied the City's request for reconsideration.

On December 22, 2021, the City filed a notice of appeal and motion for leave to file an appeal as within time. On February 2, 2022, we granted the City's motion for leave to file an appeal as within time.

On appeal the City argues it should not be compelled to produce documents which are maintained by the County custodian of records. The City relies upon the plain language of the PSA which transferred police reports to the County, and a supplemental certification from the municipal clerk explaining the City records custodian does not have the authority to retrieve records

¹ Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220, final decision (Jan. 29, 2013).

maintained by Camden County, a separate public entity with its own custodian of records.

Requestor argues he submitted his OPRA request to the "appropriate custodian" pursuant to N.J.S.A. 47:1A-5(g). Requestor contends the plain language of N.J.S.A. 47:1A-1.1 defines custodian as the "municipal" clerk, and because Camden is a municipality, it properly requested the records from the municipality, and not the county. Requestor argues nothing in the OPRA statute requires a requestor to verify the correct custodian of records prior to submitting an OPRA request. Requestor argues the distinction between the City of Camden and County of Camden is artificial and in name only because the physical location of the Police Department did not change after the City and County entered into the PSA, and the municipal clerk was therefore legally obligated to forward the OPRA requests pursuant to N.J.S.A. 47:1A-5(h). Requestor also suggests bias, prejudice, and racial discrimination factored into the municipal clerk's denial of his OPRA request.

Our review of the GRC's decision "is governed by the same standards as review of a decision by any other state agency," Fisher v. Div. of Law, 400 N.J. Super. 61, 70 (App. Div. 2008), and is therefore limited, In re Stallworth, 208 N.J. 182, 194 (2011). This court "will not overturn an agency's decision unless

it violates express or implied legislative policies, is based on factual findings that are not supported by substantial credible evidence, or is arbitrary, capricious or unreasonable." Fisher, 400 N.J. Super. at 70.

However, our standard of review is "plenary with respect to" the GRC's interpretation of OPRA. Asbury Park Press v. Cnty. of Monmouth, 406 N.J. Super. 1, 6 (App. Div. 2009). "[D]eterminations about the applicability of OPRA and its exemptions are legal conclusions and are therefore subject to de novo review." Simmons v. Mercado, 247 N.J. 24, 38 (2021) (quoting In re N.J. Firemen's Ass'n Obligation, 230 N.J. 258, 273-74 (2017)). Although this court may "give weight to the GRC's interpretation of OPRA," McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 616 (App. Div. 2010), we do not "simply rubber stamp the agency's decision," Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008) (citations omitted).

"Any analysis of OPRA must begin with the recognition that the Legislature created OPRA intending to make government records 'readily accessible' to the state's citizens 'with certain exceptions[] for the protection of the public interest.'" Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 170 (2016) (alteration in original) (quoting N.J.S.A. 47:1A-1); see also Mason v. City of Hoboken, 196 N.J. 51, 65 (2008). New Jersey champions a "long and proud

'tradition[] of openness and hostility to secrecy in government.'" Simmons, 247 N.J. at 37 (quoting Educ. Law Ctr. v. Dep't of Educ., 198 N.J. 274, 283 (2009)).

However, OPRA requests are not without measured limitations. OPRA does not "'authorize a party to make a blanket request for every document' a public agency has on file. . . . Rather, a party requesting access to a public record under OPRA must specifically describe the document sought." Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005) (quoting Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 213 (App. Div. 2005)). "Although OPRA favors broad public access to government records, it is 'not intended [to be] a research tool [that] litigants may use to force government officials to identify and siphon useful information.'" Simmons, 247 N.J. at 38 (quoting In re N.J. Firemen's Ass'n Obligation, 230 N.J. at 276 (alterations in original)). "[T]he custodian may deny . . . [a request] after attempting to reach a reasonable solution . . . that accommodates the interests of the requestor and the agency." Bent, 381 N.J. Super. at 37. A valid OPRA request requires "a search, not research." Burnett, 415 N.J. Super. at 516.

Having considered the facts, relevant statutes, precedent, and the arguments of counsel, we find this is a case of mistaken identity, not an unlawful denial of records.

N.J.S.A. 47:1A-5(g) provides an OPRA request shall be "conveyed to the appropriate custodian." The statute further provides: "If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5(h) then provides: "Any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record."

A cursory review of the evolution of these concepts, and the case law surrounding them, aids our discussion. In Bent, we quoted the language of the statute in finding "OPRA applies solely to documents 'made, maintained or kept on file in the course of a [public agency's] official business,' as well as any document 'received in the course of [the agency's] official business.'" 381 N.J. Super. at 38 (quoting N.J.S.A. 47:1A-1.1). Bent concerned an OPRA request to the Stafford Township custodian for the "entire file" of requestor's criminal investigation, which was conducted jointly by the Stafford Township Police Department, the United States Attorney for New Jersey, and the Internal Revenue Service. Id. at 33. Where the undisputed record revealed the custodian disclosed all documents in its possession, but requestor was not satisfied about

its entirety, we held even if the additional requested documents the requestor speculated did exist "the custodian was under no obligation to search for them beyond the township's files." Id. at 38.

Burnett expanded the holding in Bent and the scope and application of the statute. Burnett involved a requestor seeking production by the Gloucester County Board of Chosen Freeholders of "any and all settlements, releases, or similar documents entered into, approved or accepted from 1/1/2006 to present." 415 N.J. Super. at 508-09. The Clerk for Gloucester County responded by certifying the County did not maintain a central list of settlements, and those documents were instead maintained by either the County's insurance broker, one of the County's insurers, or outside counsel. Id. at 509. In Burnett we rejected "any narrowing legal position" that "would provide grounds for impeding access" The Appellate Division held because the settlement agreements at issue were "'made' by or on behalf of the Board in the course of its official business" the custodian wrongfully denied access. Id. at 516. Central to the holding in Burnett was the observation:

Were we to conclude otherwise, a governmental agency seeking to protect its records from scrutiny could simply delegate their creation to third parties or relinquish possession to such parties, thereby thwarting the policy of transparency that underlies OPRA.

[Id. at 517 (citing N.J.S.A. 47:1A-1).]

Most recently, our Supreme Court addressed the appropriate scope of OPRA requests in Simmons. In Simmons, the Court considered whether complaint-summonses created by municipal police officers but stored on judiciary servers were properly requested and should have been produced by the custodian for the municipal police department pursuant to OPRA instead of the judiciary custodian pursuant to Rule 1:38. The Court held, because the officers input the information that eventually becomes a CDR-1 complaint-summons or CDR-2 complaint-warrant, those records were made by the municipal police department and therefore, were government records subject to both the OPRA statute governing disclosure of government documents and the court rule governing disclosure of records. Simmons, 247 N.J. at 42. The municipal police department in Simmons could not rely on the fact once created by them, the records were maintained on judiciary servers. Id. at 41.

The facts in this matter are distinguishable from Bent and Burnett, which the parties relied upon, and Simmons, which was decided after we granted leave to appeal. Those cases deal only tangentially or indirectly with the central issues on appeal, which are: (1) determining the appropriate recipient of an OPRA

request pursuant to N.J.S.A. 47:1A-5(g), and (2) a custodian's N.J.S.A. 47:1A-5(h) duty when it has received an improvident OPRA request.

Requestor argues the holding of Burnett is applicable to the present case because although the records requested were made by Camden County police department, they were made on behalf of the dissolved City police department. Requestor asserts the distinction between the City and County is of no moment because the Camden County police utilize the extant City police headquarters.²

The City argues Burnett is not so broad and other policy considerations integral there are not applicable here. The City emphasizes pursuant to the PSA entered between the City and the County in 2013, prior to the creation of any of the requested documents, the County police force provides police services to the City. The City further highlights County police are governed by a separate enabling statute, N.J.S.A. 40A:14-106, which requires the County to establish, maintain, regulate, and control County police departments. Thus, the City argues, even applying Simmons, the records requested from the City are neither "made" nor "maintained" by the City, but rather County employees. We agree.

We refrain from disregarding a separate public entity, as requestor urges, to find there is "no difference" between the County and City. Our State

² There is no substantiating evidence of this in the record on appeal.

Constitution, and subsequent statutory enactments governing the creation, regulation, and forms of local government demonstrates otherwise. N.J. Const. art. IV, § 7, ¶ 11; see also Wagner v. Newark, 24 N.J. 467, 474 (1957) (Vanderbilt, C.J.) ("It is fundamental in our law that there is no inherent right of local self-government beyond the control of the State and that municipalities are but creations of the State, limited in their powers and capable of exercising only those powers of government granted to them by the Legislature").

Counties are comprised of municipalities. N.J.S.A. 40:14B-3(1)-(2). Our Legislature authorizes a municipality to organize as a borough,³ city,⁴ town,⁵ township,⁶ or village.⁷ When our Legislature adopted the Uniform Shared Services and Consolidation Act (USSCA), N.J.S.A. 40A:65-1 to -35, it explicitly authorized municipalities to enter into the type of shared services agreement entered by City and County of Camden.

³ N.J.S.A. 40A:60-1.

⁴ N.J.S.A. 40A:61-1.

⁵ N.J.S.A. 40A:62-1.

⁶ N.J.S.A. 40A:63-1.

⁷ N.J.S.A. 40A:63-8.

As the City correctly highlights, despite the (USSCA), County police are established and regulated by the County, as provided in N.J.S.A. 40A:14-106. Furthermore, the plain language in the PSA demonstrates the County assumed responsibility for records and evidence that were a part or became a part of the County police department. The PSA further defines which records were transferred from the City to the County. The County employs its own County clerk.

We disagree with requestor's unsubstantiated argument reducing the distinction between the City and the County to artifice. Requestor cannot point to, and our research does not yield, any caselaw to support a sweeping disregard for organizational classifications of local government at the municipal, county, and state level.

The present dispute is similar to Bent inasmuch as the custodian for the City has certified on appeal the City does not possess the records requestor seeks. The undisputed evidence here similarly demonstrates there is nothing for it to disclose for the requested period, 2017 onward, following the City and the County entering into the PSA in 2013. The plain language transferred to the County responsibility for "All police records/files," foisting responsibility for the maintenance thereof to the County. Moreover, where Simmons instructs

police departments "make" a record by inputting data, that holding is inapplicable here where the police making the record in 2017 were County, not City, employees.

Moreover, where requestor argues Burnett is applicable because the County police were making the records on behalf of the City, that argument is limited by the reasoning evident in Burnett. The Appellate Division articulated a narrow concern in Burnett, chiefly, the ability of a County to evade disclosing government records by delegating maintenance thereof to private parties, in contravention of our public policy which favors transparency. Burnett, 415 N.J. Super. at 517. Unlike Burnett, the City has not outsourced record-keeping to the County to frustrate transparency; the City no longer employs police officers. Those records are instead created and maintained by the County, a governmental entity which can be served with and OPRA request. Because the records were requested from the wrong custodian, nothing about our conclusion contravenes Simmons, as the government records requested here are exactly the type subject to disclosure pursuant to Simmons. 247 N.J. at 42.

We look now to the second issue, when an OPRA request is improvidently submitted to a custodian. The plain language of N.J.S.A. 47:1A-5(h) states "[a]ny officer or employee of a public agency who receives a request for access

to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record."

Requestor urges an interpretation of the statute that shifts the onus of record retrieval on the custodian once an OPRA request is submitted to the wrong custodian. The City argues the statute requires only one of two instructions is necessary for compliance, direct forwarding to the appropriate custodian of record, or directing requestor to the appropriate custodian of record, but not both. The City argues the custodian discharged its statutory duty by providing requestor with the point of contact for Camden County.

We need not belabor the plain text. The Legislature included a disjunctive "or" where it could have used a conjunctive "and" in instructing a custodian to forward the request or instruct requestor to the correct custodian. Having reviewed the record, the custodian for the City complied with the statute by providing requestor with the information for the appropriate custodian of record.

We note lastly only that requestor has levied claims of inherent prejudice and bias in his interactions with the City and alleges they are the real underlying reason for the City denying his OPRA request. While we are sympathetic to requestor's frustrations, those allegations are not substantiated by the record on appeal.

The custodian of record for the City of Camden did not unlawfully deny access to records which were made and maintained by the County. Once the City custodian received the request which was properly meant for the County, the custodian complied with N.J.S.A. 47:1A-5(h) by directing requestor to the County. The final order of the GRC is reversed. The award of attorneys' fees to requestor is hereby vacated.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION