

John Paff

1605 Amwell Rd
Somerset, New Jersey 08873
E-mail – PAFF@POBOX.COM
JUNE 5, 2015

Telephone – 732-873-1251

Fax – 732-862-4449

Attn: Denial of Access Complaint Intake
Government Records Council
P.O. Box 819
Trenton, NJ 08626
via e-mail only to grc@dca.state.nj.us

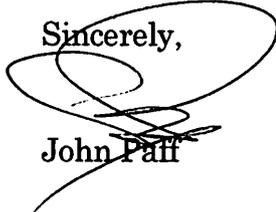
RE: Paff v. Sussex County Prosecutor's Office

Dear Sir or Madam:

Enclosed is my Denial of Access Complaint, Agreement to Mediate and cover letter to the Sussex County Prosecutor's Office showing that I have served a copy of my Complaint upon that office.

Thank you for your attention to this matter.

Sincerely,



John Paff

3. About the Record Request:

Date your records request was provided to the custodian: 6/5/15

Did you receive a reply to your request? Yes No

If so, state the date your request was denied: _____

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes No

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: _____ No

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

No 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 No

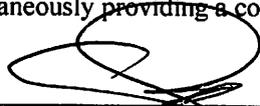
5. Documents to submit with this Form:

- Complete the attached **Records Denied List** to describe the records to which you were denied access.
- 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.
- 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.
- 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.
- 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.



Signature (required)

06/05/15

Date

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

Name of Complainant: John Paff

This is page 1 of 1.

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
1	See written supplement attached	

Paff v. Sussex County Prosecutor's Office (SCPO)

Statement of Facts:

Attached as an exhibit is the SCPO's OPRA request form, as completed and submitted by me, along with a supplement, by regular mail on June 5, 2015. The form was downloaded from the SCPO's Internet site on June 4, 2015.

Legal Argument:

I have three separate complaints against the SCPO: 1) that it insists that its specific agency form must be used for an OPRA request; 2) that it requires requestors to "deliver [the completed form] in person" and 3) that it contains limiting language that the GRC has already found deters citizens from making requests.

I have worked for many years trying to expand open government on the public's behalf. While I am familiar with the nuances of OPRA and have the knowledge and ability to overcome the impermissible hurdles that some custodians place before records requestors, these hurdles may very well dissuade others, who are less familiar, from exercising their statutory rights to access the SCPO's records. I file this complaint on their behalf as well as my own.

Mandatory use of the SCPO's specific request form:

The SCPO's request form states that

State Law requires that in order to request access to government records, you **must complete, sign and date this request form** and deliver **it in person** during regular business hours to the appropriate custodian of the record requested. Your request is not considered filed until you have delivered it to the Sussex County Prosecutor's Office. (Emphasis supplied.)

Clearly, an agency cannot require citizens to use its specific form for a request. *Tina Renna v. County of Union*, 407 N.J. Super. 230 (App. Div. 2009).

Personal Delivery requirement:

N.J.S.A. 47:1A-5(g) states, in pertinent part: "A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian."

Even though the Courts have affirmed the GRC's decision to not require a custodian to accept faxed requests, *Paff v. City of East Orange*, 407 N.J. Super. 221 (App. Div. 2009), the court in *Paff* held that: "Consequently, a custodian may not exercise his authority under N.J.S.A. 47:1A- 7(f)(1) in a manner that would impose an unreasonable obstacle to the transmission of a request for a governmental record, such as, for example, **by requiring any OPRA request to be hand-delivered.**" (Emphasis supplied)

Limiting Language

The SCPO's OPRA form states:

The terms "public record" and "government record" in New Jersey do not include . . . Pension and personnel records in possession of this office.

The SCPO's form is flawed in the same way as the one at issue in *Martin O'Shea v. Township of West Milford (Passaic)*, 2007-237. In *O'Shea*, the Council found that an OPRA form that categorically advises requestors that personnel records are exempt from disclosure while not also advising them that N.J.S.A. 47:1A-10 carves out exceptions to the personnel record exemption is "misinformation" that may deter requestors from making requests. The Council held that this by providing this misinformation, the custodian was "in essence, denying the requestor access to the records."

Request for Relief:

The SCPO is deterring records requestors by requiring them to use its specific OPRA form, by making them hand deliver it to their offices and by including misleading language in its form. I ask that the Council order the SCPO to use its Model Request Form or take other appropriate action that will protect the public's rights under OPRA.

Notice of Service:

I have mailed a copy of this complaint and all attachments to the SCPO at 19-21 High St, Newton, NJ 07860



**SUSSEX COUNTY PROSECUTOR'S OFFICE
GOVERNMENT RECORDS REQUEST FORM**



Important Notice: The attached sheet contains important information related to your rights to request government records. Please read it carefully.

Please Print:

First Name JOHN MI _____ Last Name PAFF

Company _____

Home Address 1605 AMWELL RD

City Somerset State NJ Zip Code 08873

Telephone Number where you can be reached between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday. Area Code 732 Number 873-1251 Extension _____

Citizen of USA? Yes _____ No _____

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 or any other State or the United States.

Signature [Signature] Date 6-4-15

Identification provided: Yes _____ Type: _____ Refused _____

Record Request Information. To Expedite Your Request Be as Specific as Possible:

see attached supplement

Requestor can pick up requested material at the Sussex County Prosecutor's Office (7) seven business days after date of request. If request cannot be delivered within (7) seven business days, requestor will be notified when material will be available.

Custodian of Records Review

Request Granted: _____
Request Denied: _____
Reason For Denial: _____

Custodian Signature _____ Date _____

Payment Information - Maximum Amount of Money
Requester is willing to pay: \$ _____
Select Payment Method:
Cash _____ Certified Check _____ Money Order _____
(Made payable to Sussex County Prosecutor's Office)

Fees: Letter size pages - \$0.05 per page
Legal size pages - \$0.07 per page
Other materials (CD, DVD, VHS - etc) - actual
Delivery: Delivery / postage fees additional depending upon delivery type.
Extras: Special service charge dependent upon request.

Total Number of Pages Copied: _____ Total Costs _____
Extraordinary Costs if any: _____ Amount Paid _____ Date _____

Original: Custodian of Records; Copy: Requestor; Copy: Defendant's if any.

on 6/5/15 mailed to: Custodian of Records
Sussex County Prosecutors Off.
19-2L High St.
Newton NJ 07860

IMPORTANT INFORMATION FOR PUBLIC ACCESS TO GOVERNMENT RECORDS:

Access to government records is available under the Open Public Records Act to citizens of the USA who are also residents of New Jersey.

The terms "public record" and "government record" in New Jersey do **not** include:

- Criminal Investigatory Records
- Victim's records
- Inter-agency or intra agency, consultative, or deliberative material
- Emergency or security information or procedures for buildings or facilities
- Administrative or technical information regarding computer hardware, software and networks, which if disclosed, would jeopardize computer security
- Information regarding labor-management negotiations including statements of strategy or negotiating position
- Pension and personnel records in possession of this office

1. State Law requires that in order to request access to government records, you must complete, sign and date this request form and deliver it in person during regular business hours to the appropriate custodian of the record requested. Your request is not considered filed until you have delivered it to the Sussex County Prosecutor's Office.

2. The fees for duplication of a government record in printed form are listed on the front of the requestor form. We will notify you of any special charges, special service charges, or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, certified check or money order payable to the Sussex County Prosecutor's Office.

3. Requests with estimated fees exceeding \$25.00 must be accompanied by a 50% deposit. You agree to pay the balance upon delivery of the records.

4. By State Law, a custodian must deny access to a person who is convicted of an indictable offense in New Jersey, any other state, or the United States, who is seeking government records containing personal information pertaining to the person's victim or the victim's family.

5. By law, the Sussex County Prosecutor's Custodian of Records must notify you within (7) seven business days from receipt of your request as to whether it grants or denies your request. If the record requested is not currently available or is in storage or archived, the custodian will advise you within (7) seven business days when the record can be made available and the estimated cost.

6. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you that accommodates your interests and the interests of the Sussex County Prosecutor's Office.

7. If the Sussex County Prosecutor's Office is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form and send you a signed and dated copy.

8. Except as otherwise provided by law or by agreement with the requestor, if the custodian of the record requested fails to respond to you within (7) seven business days of receiving a written, signed request form, the failure to respond will be considered a denial of your request.

9. If your request for access to a government record has been denied or unfilled within the time permitted by law, you have a right to challenge the decision by the Sussex County Prosecutor's Office to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC) located in the Department of Community Affairs.

Supplement to John Paff's June 4, 2015 Records Request to Sussex County Prosecutor:

Please accept this as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to paff@pobox.com. Thank you.

Records Requested:

1. All lodging and food receipts for Francis Koch and Gregory Mueller for their attendance at the New Jersey Bar Association Convention from May 14 to May 16, 2014 in Atlantic City, along with any and all other receipts they submitted from the convention.
2. Documentation of how much mileage Koch and Mueller put on their assigned county owned vehicle to attend the convention along with any gas receipts.
3. Documentation of any benefit leave time Koch and Mueller used to attend the convention.
4. Copies of all reimbursement checks issued to Koch and Mueller from the County of Sussex and/or the Sussex County Prosecutor's Office for receipts they submitted from the convention.

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Attn: Records Custodian
Sussex County Prosecutor's Office
19-21 High St
Newton, NJ 07860

Dear Sir or Madam:

Enclosed are two stapled packets. The thinner one is an Open Public Records Act request. The thicker packet is a denial of access complaint that I have filed against your office with the Government Records Council.

Note that I have specifically requested that my OPRA dispute be mediated. I hope that your office will also agree to mediation. Also note that I have previously filed similar complaints against other county prosecutors' offices that have resulted in mediated settlements. For instance, please see the Hudson County Prosecutor's Office OPRA webpage at:

<http://www.hcpc.org/hcpc/contact/opra.php>

This is the result of a mediated settlement of my GRC Denial of Access complaint against that office. If the Sussex County Prosecutor's Office would like to create a request form and webpage similar to that adopted by the Hudson County Prosecutor, please let me know and we can settle this matter quickly and efficiently.

Thank you for your attention to this matter.

Sincerely,



John Paff

cc. Government Records Council