



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

October 29, 2013 Government Records Council Meeting

Gregory Carroll
Complainant

Complaint No. 2013-78

v.

Middletown Police Department
Custodian of Record

At the October 29, 2013 public meeting, the Government Records Council (“Council”) considered the October 22, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian bore his burden of proving that he did not unlawfully deny access to the responsive records as they constitute criminal investigatory records and are thus exempt under OPRA. *See N.J.S.A. 47:1A-1.1, O’Shea v. Twp. of West Milford*, 410 N.J. Super. 371 (App. Div. 2009), *Nance v. Scotch Plains Twp. Police Dep’t*, GRC Complaint No. 2003-125 (January 2005), *Janeczko v. N.J. Dep’t of Law and Pub. Safety, Div. of Criminal Justice*, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). N.J.S.A. 47:1A-6. The Council declines to address whether the records are exempt based on a citizen’s reasonable expectation of privacy because same are exempt in their entirety under N.J.S.A. 47:1A-1.1.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 29th Day of October, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: November 1, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 29, 2013 Council Meeting**

**Gregory Carroll¹
Complainant**

GRC Complaint No. 2013-78

v.

**Middletown Police Department²
Custodial Agency**

Records Relevant to Complaint: Copy of a “wellness check” police report under Case No. 130219-0065.

Custodian of Record: Lt. William Brunt

Request Received by Custodian: February 28, 2013

Response Made by Custodian: February 28, 2013

GRC Complaint Received: March 11, 2013

Background³

Request and Response:

On February 28, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 28, 2013, the Custodian responded in writing denying Complainant’s request on the basis that the record sought is a criminal investigatory record and is exempt from public access pursuant to N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On March 11, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the record is a police report in reference to a “wellness check” on the Complainant’s son while in his custody.

Complainant asserts that on February 28, 2013, he made a request for the record at the Middletown Police Department (“MPD”). The Complainant then states he received a response

¹ Represented by Ron Carlin, Esq.

² Represented by Brian M. Nelson, Esq., of Archer & Greiner, P.C. (Shrewsbury, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

from the Custodian two (2) business days later, denying his request on the basis that criminal investigatory records are exempt from public access.

Statement of Information:

On April 10, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that his search for the requested record yielded a computer-aided dispatching (“CAD”) report and an incident report.

After review, the Custodian determined that the responsive reports are exempt from public access under N.J.S.A. 47:1A-1.1, Executive Order No. 9 (Governor Hughes, 1963), Executive Order No. 123 (Governor Kean, 1985), and Executive Order No. 69 (Governor Whitman, 1997). The Custodian certifies that the responsive documents consist of reports constituting criminal investigatory records regarding the investigation of an allegation of a violation of the N.J. Code of Criminal Justice, specifically Endangering the Welfare of Children, N.J.S.A. 2C:24-4, *et seq.* and Title 9, Children – Juvenile and Domestic Relations Courts, Abuse, Abandonment, Cruelty and Neglect[sic], N.J.S.A. 9:6-1, *et seq.* The Custodian also states that there was no arrest made in connection with this investigation.

Finally, the Custodian certifies that aside from the criminal investigatory exemption, these documents are exempt from disclosure under OPRA based on privacy issues pursuant to N.J.S.A. 47:1A-1. The Custodian certifies that his response was sent on February 28, 2013, the same day he received the OPRA request.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA defines a "criminal investigatory record" as a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding (N.J.S.A. 47:1A-1.1).

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ... A government record shall not include the following ... *criminal investigatory records ...*”

N.J.S.A. 47:1A-1.1 (emphasis added).

For a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test: that is, “‘not be required by law to be made,’ and the record must ‘pertain[] to any criminal investigation or related civil enforcement proceeding.’” O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009). The status of records purported to fall under the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 was examined by the GRC in Janeczko v. N.J. Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), affirmed in an unpublished opinion of the Appellate Division of the New Jersey Superior Court in May, 2004. The Council found that under OPRA, “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.”

In Nance v. Scotch Plains Twp. Police Dep’t, GRC Complaint No. 2003-125 (January 2005), the Council determined that police incident reports which contain the name of the arrested, written narratives prepared by the responding officers, and statements from witnesses, are criminal investigatory records exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

Here, the Custodian certifies that the responsive records pertain to an investigation into allegations of a violation of N.J.S.A. 2C:24-4 and N.J.S.A. 9:6-1. Similar to the contents of the incident report in Nance, the Complainant states that the report would contain observations by two police officers who visited his residence at the request of the Complainant’s estranged wife. In addition, the Complainant admits that the observing officers interviewed him while at the residence. Though it is unclear whether the incident report discovered by the Custodian pertains to the “wellness check” as described by the Complainant, the Complainant’s description of the requested report’s contents, in conjunction with the Custodian’s certification, lends to the conclusion that the report the Complainant is requesting is a criminal investigatory record and therefore exempt under N.J.S.A. 47:1A-1.1.

In conclusion, the Custodian bore his burden of proving that he did not unlawfully deny access to the responsive records as they constitute criminal investigatory records and are thus exempt under OPRA. See N.J.S.A. 47:1A-1.1, O’Shea, 410 N.J. Super. at 371, Nance, GRC 2003-125, and Janeczko, GRC 2002-79 and 2002-80. N.J.S.A. 47:1A-6.

The GRC declines to address whether the records are exempt based on a citizen’s reasonable expectation of privacy because same are exempt in their entirety under N.J.S.A. 47:1A-1.1.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian bore his burden of proving that he did not unlawfully deny access to the responsive records as they constitute criminal investigatory records and are thus exempt under OPRA. See N.J.S.A. 47:1A-1.1, O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009), Nance v. Scotch Plains Twp. Police Dep’t, GRC Complaint No. 2003-125 (January 2005), Janeczko v.

N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). N.J.S.A. 47:1A-6. The Council declines to address whether the records are exempt based on a citizen's reasonable expectation of privacy because same are exempt in their entirety under N.J.S.A. 47:1A-1.1.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Brandon D. Minde, Esq.
Executive Director

October 22, 2013