



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

March 28, 2007 Government Records Council Meeting

Dion Briggs
Complainant
v.
City of Trenton
Custodian of Record

Complaint No. 2007-58

At the March 28, 2007 public meeting, the Government Records Council (“Council”) considered the March 21, 2007 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 denial of access was lawful as the requested records are criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1 and are exempt from disclosure.

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 28th Day of March, 2007



Vincent P. Maltese, Chairman
Government Records Council

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

Government Records Council

Decision Distribution Date: April 2, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 28, 2007 Council Meeting**

**Dion Briggs¹
Complainant**

GRC Complaint No. 2007-58

v.

**City of Trenton²
Custodian of Records**

Records Relevant to Complaint: Lewis Daniels' police report dated July 17, 2004.

Request Made: October 25, 2006

Response Made: October 27, 2006

Custodian: City of Trenton, Penelope Edwards-Carter

GRC Complaint Filed: January 16, 2007

Background

October 25, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests a copy of Mr. Lewis Daniels' police report, dated July 17, 2004. Attached is a letter from the Complainant to the Custodian, dated October 21, 2006. The Complainant asserts that he needs the requested police report to aide in his defense at his trial.

October 25, 2006

Letter from Custodian to Police Director. The Custodian informs the Director that he does not have records pertaining to this OPRA request and informs the Director that the OPRA request must be fulfilled or denied by November 4, 2006.

October 26, 2006

Letter from Police Director to Custodian. The Police Director informs the Custodian that the records responsive are not releasable based on the criminal investigatory record exemption in OPRA.

October 27, 2006

Custodian's response to the OPRA request. The Custodian responded to the Complainant's OPRA request on the second business day following receipt of such request. The Custodian states that the Complainant is being denied access to the requested record because the requested police report falls under the criminal investigatory record exemption in OPRA.

¹ No legal representation listed.

² Represented by Joseph A. Alacqua, Esq. (Trenton, NJ).

January 25, 2007

Denial of Access Complaint filed with the Government Records Council³. The Complainant asserts that he is requesting a copy of Mr. Lewis Daniel's police report, dated July 14, 2006, in hopes that this report will aide in the Complainant's defense at trial.

February 9, 2007

Offer of Mediation sent to both parties.

February 16, 2007

On this day, the Custodian accepts mediation. The Complainant did not agree to mediate this complaint.

February 26, 2007

Request for the Statement of Information ("SOI") sent to the Custodian.

March 6, 2007

GRC's second request for the Custodian's SOI. The Custodian failed to submit her SOI to the GRC within the five (5) business day time frame. The GRC gives the Custodian a three (3) business day extension.

March 9, 2007

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA records request dated October 21, 2006,
- Letter from Complainant to Custodian dated October 21, 2006,
- Letter from the Custodian to the Director of Police dated October 25, 2006,
- Letter from the Director of Police to the Custodian dated October 26, 2007, and
- Letter from Custodian to Complainant dated October 27, 2007.

Analysis

Whether the denial of access was lawful pursuant to N.J.S.A. 47:1A-1.1 regarding the exemption from disclosure of criminal investigatory records?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-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

³ The Complainant provided the GRC with attachments that are not relevant to the adjudication of this complaint.

in a similar device, or any copy thereof, that has been *made, maintained or kept on file* ... or that has been *received* ... A government record shall not include the following information which is deemed to be confidential... *criminal investigatory records* ... 'Criminal investigatory record' means 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. ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

"...[t]he public agency shall have the burden of proving that the denial of access is authorized by law..." N.J.S.A. 47:1A-6.

The Complainant asserts that he is requesting a copy of Mr. Lewis Daniel's police report, dated July 14, 2006, in hopes that this report will aid in the Complainant's defense at trial. The Complainant further asserts that he is being denied access to this police report by the Custodian.

The Custodian asserts that the Complainant's OPRA request was received on October 25, 2006, at which time the Custodian forwarded the request to the Police Director, who held the record responsive. The Custodian further asserts that on October 26, 2006, the Police Director informs the Custodian that the record responsive is not releasable based on the criminal investigatory record exemption in OPRA. Additionally, the Custodian asserts that on October 27, 2006, two (2) business days after receiving the Complainant's OPRA request, the Custodian sent the Complainant a letter denying him access to the record responsive, citing that the requested police report is exempt from disclosure because it falls under the criminal investigatory record exemption in OPRA.

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. 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). Criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and include information that is part and parcel of an investigation, confirmed and unconfirmed.

In Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint No. 2002-79 and 2002-80 (June 2004), the Council found that the records being sought were considered criminal investigatory records and therefore exempt from disclosure. Specifically, 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. The Council stated that it is also important to note that the exemption does not permit access to investigatory records once the investigation is complete. The exemption applies to records that conform to the statutory description,

without reference to the status of the investigation and the Council does not have a basis to withhold from access only current active investigations and release those where the matter is resolved or closed.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the denial of access was lawful as the requested records are criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1 and are exempt from disclosure.

Prepared By:

Rebecca Steese
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

Date: March 21, 2007