



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 29, 2013 Government Records Council Meeting

Anthony Reitzler
Complainant

Complaint No. 2011-85

v.

Egg Harbor Police Department (Atlantic)
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 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 because the Complainant has requested OPRA exempt criminal investigatory files, the Custodian has not unlawfully denied the Complainant access to the requested investigation report and photographs. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); and Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007). Moreover, the requested crime scene photographs are not considered public records as set forth in Executive Order No. 69 (Gov. Whitman, 1997) and are not disclosable under OPRA pursuant to N.J.S.A. 47:1A-9(a).

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 January, 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: February 5, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Anthony Reitzler¹
Complainant**

GRC Complaint No. 2011-85

v.

**Egg Harbor Police Department (Atlantic)²
Custodian of Records**

Records Relevant to Complaint:

1. Police reports (i.e. interviews, observations, statements, etc.)
2. Photographs (specifically car interior pictures of a Cadillac Seville and the Precision Deer Slayer that was recovered).

Request Made: February 19, 2011

Response Made: March 4, 2011

Custodian: Captain Hector Tavarez

GRC Complaint Filed: March 29, 2011³

Background

February 19, 2011

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form via mail. The Complainant states that the requested documents are related to the death of Mr. Kochanowicz on April 17, 1981 in Egg Harbor Township.

March 4, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via a written response on the Complainant's OPRA request form on the fifth (5th) business day following receipt of such request.⁴ The Custodian states that access to the requested record is denied because the requested records are considered criminal investigatory records that are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1.

¹ No legal representation listed on record.

² Represented by Marc Friedman, Esq. (Linwood, NJ).

³ The GRC received the Denial of Access Complaint on said date.

⁴ The Custodian certifies in the SOI that he received the Complainant's OPRA request on February 27, 2011. In the Denial of Access Complaint, the Complainant states that he received this response to his request on March 10, 2011.

March 29, 2011

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated February 19, 2011
- Custodian’s response to the OPRA request dated March 4, 2011

The Complainant argues that the requested photos and police records that include interviews and witness statements are not a part of an ongoing investigation. The Complainant contends that the requested records are disclosable because the case is now closed. The Complainant states that he has an action pending in the Appellate Division of Superior Court and needs the records to show that the permanent record contains factual errors. The Complainant maintains that he will take the case to Superior Court if disclosure is not ordered by the Council.

The Complainant does not agree to mediate this complaint.

April 8, 2011

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

April 14, 2011⁵

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated February 19, 2011
- Custodian’s response to the OPRA request dated March 4, 2011

The Custodian certifies that the requested records have a permanent retention schedule and that none of the records were destroyed. The Custodian certifies that a search for records yielded a 99 page case report and eight (8) photos corresponding to case #81-5437. The Custodian certifies that none of the responsive records were provided to the Complainant because they constituted OPRA exempt criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1.

Analysis

Whether the Custodian unlawfully denied access to the requested record?

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.

⁵ (If applicable: The Custodian did not certify to the search undertaken to locate the records responsive or whether any records responsive to the Complainant’s OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).)(Note: if the Custodian certifies to one of these points but not the other, include the appropriate half of this footnote after the paragraph describing search or DARM schedule.)

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 information which is deemed to be confidential ... criminal investigatory records[.]” (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.

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 provides in pertinent part that:

“A government record shall not include the following information which is deemed to be confidential for the purposes of [OPRA] ... criminal investigatory records ...” N.J.S.A. 47:1A-1.1.

Further, a criminal investigatory record is defined in OPRA 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 states that “[t]he provisions of this act...shall not abrogate any exemption of a public record or government record from public access... made pursuant to Executive Order of the Governor.” N.J.S.A. 47:1A-9(a).

Executive Order No. 69 (Gov. Whitman, 1997) states that:

“[t]he following records shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of [OPRA], as amended: fingerprint cards, plates and *photographs* and similar criminal investigation records that are required to

be made, maintained or kept by any State or local governmental agency.”
(Emphasis added.)

Thus, 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 is encompassed within the definition of a criminal investigatory record set forth at N.J.S.A. 47:1A-1.1 and is therefore exempt from disclosure under OPRA.

In the instant matter the Complainant is seeking police reports and photographs related to a criminal investigation. The Custodian contends that the requested records are exempt from disclosure as criminal investigatory records. A review of the Complainant’s request has the Council find that such records are not disclosable.

In Morgano v. Essex County Prosecutor’s Office, GRC Complaint No. 2007-156 (October 2008), the Council held in pertinent part that “[t]he record requested ... a police arrest report, is required to be maintained or kept on file by the [RMS], therefore it is a government record subject to disclosure pursuant to N.J.S.A. 47:1A-1.1.” *See also* Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (Interim Order dated February 27, 2008).

However, in response to recent legal developments, the Council now reverses its decision in Morgano, *supra*, and Bart, *supra*, and determines that the RMS record retention schedules do not operate as “law” under OPRA pursuant to N.J.S.A. 47:1A-1.1 to render criminal investigatory records disclosable under OPRA. The GRC’s order for disclosure of arrest reports in Morgano, *supra*, still rests on the observation that most information subject to disclosure under N.J.S.A. 47:1A-3(b) and thus arrest reports should be disclosed with appropriate redactions for ease of disclosure.

Prior to the 2002 passage of the OPRA, individuals seeking access to government documents could file pursuant to the Right-to-Know Law (previously codified at N.J.S.A. 47:1A-1 et seq.) or the common law. Under the Right-to-Know Law, individuals had the right to inspect and copy records “required by law to be made, maintained or kept on file by public officials.” State v. Marshall, 148 N.J. 89, 272 (1997). In the context of criminal investigatory records, the New Jersey Supreme Court held that “[t]he Right-to-Know Law does not provide ... the right to inspect the law-enforcement files ... because no law or regulation requires that such files ‘be made, maintained or kept.’” *Id.*; *see also* Daily Journal v. Police Dep’t of the City of Vineland, 351 N.J. Super. 110, 121 (App. Div. 2002); River Edge Savings & Loan Ass’n v. Hyland, 165 N.J. 540, 545 (App. Div. 1979). Thus, the Court considered criminal investigatory records outside of the set of documents required to be produced under the Right-to-Know Law.

The pre-OPRA case law permitted production of some of these criminal investigatory records only after balancing the State’s interest against the individual’s and the public’s interest in disclosure. Marshall, 148 N.J. at 273-74; Daily Journal, 351 N.J. Super. at 122-23. This common law “balancing test” required that the person seeking access demonstrate standing by showing an interest in the subject matter of the material, and then an “exquisite weighing process” involving six non-dispositive factors. Daily

Journal, 351 N.J. Super. at 123 (quoting Beck v. Bluestein, 194 N.J. Super. 247, 263 (App. Div. 1984)); *see also* Loigman v. Kimmelman, 102 N.J. 98, 113 (1986).

This background framed the legislature’s passage of OPRA in 2002. The bills originally introduced in the Assembly and Senate did not contain a general exemption for “criminal investigatory records.” Senate No. 2003, 209th Sess. (N.J. 2000); Assembly No. 1309, 209th Sess. (N.J. 2000). However, at a public hearing on March 9, 2000 before the Senate Judiciary Committee, several witnesses expressed concern over the lack of clarity in the original OPRA legislation as to whether, as a general matter, prior exemptions that had been enacted by Executive Order or through case law under the Right-to-Know law would survive the passage of OPRA. *See, e.g.*, Transcript of Public Hearing on Senate Bill Nos. 161, 351, 573, and 866, at 23 (Mar. 9, 2000), *available at* <http://www.njleg.state.nj.us/legislativepub/Pubhear/030900gg.PDF> (statement of William J. Kearns, Esq., N.J. State League of Municipalities). The Judiciary Committee members unequivocally suggested that these exemptions would survive or would be provided for in a contemporaneously passed Executive Order. *Id.* at 29-30 (“In other words, we contemplated this as all of those protections that are provided in statutes, in legislative resolutions, and executive orders would remain in place.”)(statement of Sen. Martin).

The exemption from disclosure for “criminal investigatory records” was then introduced in a May 3, 2001 floor amendment to the Senate bill by OPRA’s co-sponsor, Senator Martin, and remains in that form in the law. In Senator Martin’s statement accompanying the floor amendment he noted that “[t]he amendments *exempt criminal investigatory records of a law enforcement agency from the statutory right of access.* However, a common law right of access could be asserted to these and other records not accessible under the statute.” (Emphasis added.) Statement to Senate No. 2003, 209th Sess. (N.J. May 3, 2011). This statement was reflected in the final structure of OPRA, which provided an exemption for “criminal investigatory records,” but noted that “[n]othing contained in [OPRA] ... shall be ... construed as limiting the common law right of access to a government record, *including criminal investigatory records of a law enforcement agency.*” (Emphasis added.) N.J.S.A. 47:1A-8.

In addition, the May 3, 2001 floor amendment adopted the definition of “criminal investigatory records” in terms that mimicked the language used by the prior Right-to-Know Law. Specifically, a “criminal investigatory record” was defined to entail “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.) Senate No. 2003 § 2, 209th Sess. (N.J. as amended, May 3, 2011).

Finally, in his message upon signing the final version of OPRA, Governor McGreevey mentioned only limited exemptions explicitly but included “exemptions for victims’ records, emergency and security information, *criminal investigatory records and other appropriate areas that warrant confidentiality.*” (Emphasis added.) Statement of Gov. James E. McGreevey upon passage of OPRA at 1 (Aug. 13, 2002).

The Legislature’s specific statement that the floor amendment was intended to keep criminal investigatory records as exempt from disclosure and its mimicking of the

Right-to-Know Law in the definition of “criminal investigatory records” strongly suggests its intent to maintain the prior exemption as defined by the courts.

The courts’ subsequent interpretation of OPRA confirms this view. In Daily Journal v. Police Department of the City of Vineland, one of the last cases decided under the Right-to-Know Law, the Appellate Division analyzed the then-recently enacted OPRA statute as part of its application of the common law balancing test. The Court noted the exemption for and definition of “criminal investigatory records” under OPRA and found that the preservation of the common law balancing test was a “clear legislative acknowledgement that a compelling public interest is served by protecting the private interests of such citizens.” 351 N.J. Super. at 130. In other words, the Appellate Division viewed OPRA’s exemption from disclosure for criminal investigatory records as an endorsement of the common law balancing test as the means to gain access to criminal investigatory records. The courts have continued to apply the pre-OPRA exemption and common-law balancing test as developed under the Right-to-Know Law. *See, e.g., R.O. v. Plainsboro Police Dep’t*, No. A-5906-07T2, 2009 N.J. Super. Unpub. LEXIS 1560 (App. Div. June 17, 2009); Bent v. Township of Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005).

The definition of “criminal investigatory records” under OPRA excludes documents that are required to be “maintained or kept on file” by a public official from the scope of the exemption. This definition becomes problematic because the New Jersey State Records Committee has, pursuant to statutorily granted authority, created a record retention schedule through the RMS that requires police and other agencies to “maintain” various criminal investigatory records. N.J.S.A. 47:3-20; N.J.A.C. 15:3-2.1(b); *see also N.J. Land Title Ass’n v. State Records Comm.*, 315 N.J. Super. 17, 26 (App. Div. 1998) (discussing the Legislature’s delegation of authority to the Committee in order to “centraliz[e] control of the State’s public records in a single agency whose expertise would assure uniformity in the decision-making process concerning the retention and disposition of those records.”).

Although the RMS schedule is likely sufficient to make the retention of such records mandatory,⁶ there are two strong arguments that the Legislature intended criminal investigatory records to be exempted from disclosure under OPRA despite the RMS requirements. First, the directive for the creation of the RMS schedules was passed by the legislature in 1953. Thus, when the New Jersey Supreme Court decided State v. Marshall, 148 N.J. 89, 272 (1997), the RMS schedules were in place, but the Court still concluded that “no law or regulation requires that [criminal investigatory records] ‘be made, maintained or kept.’” Marshall, 148 N.J. at 272. The Legislature’s passage of OPRA with this language can be construed as its acquiescence to the Marshall decision and the Court’s holding that no law requires that criminal investigatory records be maintained. *See, e.g., Dep’t of Children & Families v. T.B.*, 207 N.J. 294, 307 (2011)(noting that “acquiescence on the part of Legislature,” or its “continued use of same language” is evidence that the legislature intended to maintain the construction

⁶ *See O’Shea v. Township of W. Milford*, 410 N.J. Super. 371 (App. Div. 2009), wherein the Appellate Division found that the Attorney General’s guidance document requiring the completion of Use of Force Reports had the “force of law” for police departments because the Attorney General has the authority to issue such policy and directives. *Id.* at 382.

given to a statute by prior case law)(*citing* Asbury Park Press, Inc. v. City of Asbury Park, 19 N.J. 183, 190 (1955)).

Additionally, the apparently wide scope of the RMS schedules would potentially take all documents that could be classified as “criminal investigatory records” outside of the definition set in OPRA and would therefore render the exemption meaningless. The courts have disfavored statutory constructions that render portions of a statute superfluous. *See, e.g., N.J. Ass’n of School Administrators v. Schundler*, 211 N.J. 535, (2012) at 553 (“[L]egislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless.”) (*quoting* Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 613 (1999)).

Therefore, it can be concluded that in passing OPRA, the Legislature intended to preserve the then-existing state of the law with respect to the disclosure of criminal investigatory records, *i.e.*, that the RMS record retention schedules do not operate to render criminal investigatory records disclosable under OPRA.

However, in North Jersey Media Group, Inc. v. Paramus, Docket No. BER-L-2818-11 (June 15, 2011), the Law Division was tasked with determining whether the responsive records were exempt as criminal investigatory records based on retention schedules set forth by RMS. The Court noted that:

“... in establishing legal support ‘[a] decision of the [GRC] shall not have value as a precedent for any case initiated in Superior Court.’ N.J.S.A. 47:1A-7. However, ‘we review final agency decisions with deference and that we will not ordinarily overturn such determinations unless they were arbitrary, capricious or unreasonable, or violated legislative policies expressed or implied in the act of governing the agency.’ Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 363 (App. Div. 2003) (*citing* Campbell v. Dep’t of Civil Serv., 39 N.J. 556, 562 (1963)).” *Id.* at pg. 12.

Thus, in order to make a determination whether retention schedules effectively had the force of law, the Court looked to the Appellate Division’s decision in N.J. Land Title, supra, and the GRC’s decision in Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (Interim Order dated February 27, 2008)(holding that arrest reports are government records under N.J.S.A. 47:1A-1.1. because they are required to be retained until the final disposition of a relevant case per Records Series No. 0007-0000).

Regarding N.J. Land Title, the Court noted that although case law is sparse on the issue of the effect of retention schedules, this case appears to have answered the question of whether retention schedules carry the force of law in the affirmative. The Court reasoned that although it the Appellate Division “... did not directly state that [RMS] requirements, as approved by the State Records Committee, are law, based on the holding and reasons for the holding, the requirements at the least *appear* to carry the force of law.” (Emphasis added.) *Id.* at pg. 28.

Regarding Bart, supra, the Court reasoned that RMS is responsible for ensuring that “government records are maintained in accordance with the State’s public records

laws ...” and thus developed retention schedules requiring police departments to maintain the responsive records for a certain amount of time. The Court further noted that, in Bart, supra, the Council determined that records required by RMS to be maintained or kept on file are considered government records as they are required by law to be made, maintained or kept on file. The Court reasoned that the Council’s holding in Bart, supra, “has not been contradicted by any court of competent jurisdiction.” *Id.* at pg. 17.

The NJMG Court thus held that the records “... are government records as they are required by [RMS] to be kept on file. N.J.S.A. 47:1A-1.1.; [RMS] Municipal Police Departments M900000-004, Records Series No. 0010-0000 ...; [RMS] Municipal Police Departments M900000-004, Records Series No. 0102-0001 through No. 0102-0003 ... they are not criminal investigatory records” *Id.* at pg. 22. The Court finally held that “[a]s defendants ... have failed to satisfy their burden to show the denial of access was proper, N.J.S.A. 47:1A-6, access to the requested records is not precluded pursuant to the criminal investigatory exemption.” *Id.* at Pg. 29.

In an unpublished decision in North Jersey Media Group, Inc. v. Paramus, 2012 N.J. Super. Unpub. Lexis 1685 (App. Div. 2012), the Appellate Division subsequently affirmed the Law Division’s decision “... substantially for the reasons articulated ...” therein that the requested police dispatch audio recordings and police video recordings were not considered “criminal investigatory” records because said records were required to be maintained by defendants pursuant to their retention schedules set forth by RMS. The Appellate Division further noted that the Court “concluded the [RMS] requirements carry the force of law.” *Id.* at 5.

However, N.J. Court Rule 1:36-3 states that:

“No unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel.”

Therefore, although North Jersey, supra, stands for the proposition that records retention schedules carry the force of law, this unpublished opinion does not constitute precedent, nor is it binding upon the GRC.

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. NJ Department of Law and Public Safety, Division 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. In Janeczko, the complainant requested access to copies of records related to alleged criminal actions committed by her son, who was ultimately killed by police officers. 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”. Consequently, the complainant’s request was denied.

It is important to note that the criminal investigatory records exemption continues to survive the conclusion of the investigation. As the Council pointed out in Janeczko, *supra*:

“[the criminal investigatory records 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 currently active investigations and release those where the matter is resolved or closed.”

The finding in Janeczko concurs with the Council’s decision in Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007). In Brewer, the Complainant filed an OPRA request to obtain lab records that were in the custody of the New Jersey State Police for use in an investigation. The Council found that the requested records were part of a criminal investigative file and were exempt from disclosure under OPRA. Accordingly, the Council determined that the complainant’s request was lawfully denied.

In this instant matter, Custodian certified that the requested records are criminal investigatory records that are exempt from disclosure under OPRA. The Complainant has not provided any competent evidence to refute this certification. Moreover, Item No. 2 of the Complainant’s requests constitutes photographs used in a criminal investigation that are exempt from disclosure pursuant to Executive Order No. 69 (“Gov. Whitman”).

Therefore, because the Complainant has requested OPRA exempt criminal investigatory files, the Custodian has not unlawfully denied the Complainant access to the requested investigation report and photographs. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); and Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007). Moreover, the requested crime scene photographs are not considered public records as set forth in Executive Order No. 69 (Gov. Whitman, 1997) and are not disclosable under OPRA pursuant to N.J.S.A. 47:1A-9(a).

Because the Custodian did not unlawfully deny access to the requested records because they are criminal investigatory records which are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1, the Council declines to address the issue of whether such records are also exempt from disclosure pursuant to N.J.S.A. 47:1A-3.a.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant has requested OPRA exempt criminal investigatory files, the Custodian has not unlawfully denied the Complainant access to the requested investigation report and photographs. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); and Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007). Moreover, the requested crime scene photographs are not considered public records as set forth in Executive Order No. 69 (Gov. Whitman, 1997) and are not disclosable under OPRA pursuant to N.J.S.A. 47:1A-9(a).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013