



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**May 28, 2013 Government Records Council Meeting**

John Fano  
Complainant

Complaint No. 2012-148

v.

New Jersey Department of Human Services,  
Office of Legal & Regulatory Affairs  
Custodian of Record

At the May 28, 2013 public meeting, the Government Records Council (“Council”) considered the May 21, 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 since the responsive records likely contain information regarding “... security measures and surveillance techniques ...” that could create a risk to the Human Services Police officer identified in the Complainant’s OPRA request, same are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. As such, the Custodian has borne her burden of proving a lawful denial of access to the responsive GPS records. N.J.S.A. 47:1A-6.

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 28<sup>th</sup> Day of May, 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: June 11, 2013**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 28, 2013 Council Meeting**

**John Fano<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2012-148**

**v.**

**New Jersey Department of Human Services,  
Office of Legal & Regulatory Affairs<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** Copies via U.S. mail of global positioning system (“GPS”) records, to include full reports, of the primary vehicles used by Sergeant Jon Molinaro (“Sgt. Molinaro”) between September 1, 2010 and November 1, 2011.

**Request Made:** May 10, 2012

**Response Made:** May 18, 2012

**GRC Complaint Filed:** May 18, 2012<sup>3</sup>

**Background<sup>4</sup>**

**Request and Response:**

On May 10, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Office of Legal & Regulatory Services (“LRS”). On May 18, 2012, the Custodian responded in writing denying access to the responsive records stating the records include details regarding surveillance techniques and staff levels that could pose a risk to the safety of police personnel. N.J.S.A. 47:1A-1.1. On the same day, the Complainant asked if he could amend his request to identify the times Sgt. Molinaro’s primary vehicle arrived and departed from its holding location. The Custodian advised that the records would still be exempt from access for the same reason.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Ellen Casey, Custodian of Records. Represented by Deputy Attorney General Michael Kennedy, Esq.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> 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.

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### Denial of Access Complaint:

On May 18, 2012, the Complainant filed a complaint with the Government Records Council (“GRC”). The Complainant disputed the denial of access but provided no additional arguments.<sup>5</sup>

### Statement of Information:

On October 12, 2012, the Custodian submitted a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on May 10, 2012. The Custodian certifies that she responded in writing on May 18, 2012, denying access to the responsive records pursuant to N.J.S.A. 47:1A-1.1. The Custodian certifies that in response to the Complainant’s request to amend his OPRA request, the Custodian advised that the records would still be exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

The Custodian certifies that the number of records responsive total 38 pages during a time frame of October 5, 2011 to November 1, 2011. The Custodian certifies that the vendor maintains records for one (1) year.

The Custodian’s Counsel submitted a letter brief stating that the Human Services Police (“HSP”) protect facilities operated by the New Jersey Department of Human Services (“DHS”) such as development centers and psychiatric hospitals. Counsel states that the HSP also has a joint agreement with the New Jersey Department of Children & Families to protect case workers and offices across the state. Counsel states that the HSP essentially perform the same basic duties of municipal police officer and protects some of the state’s most vulnerable residents.

Counsel contends that the responsive records are exempt from disclosure because they reflect “... security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property ...”. See N.J.S.A. 47:1A-1.1; Rivera v. Rutgers, The State University of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012)(citing McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388, 391 (App. Div. 2008) holding that police daily duty logs were exempt from access under N.J.S.A. 47:1A-1.1). Counsel contends that the Complainant’s OPRA request seeks information regarding Sgt. Molinaro’s duty assignments by way of GPS data, which can track the location of HSP vehicles equipped with GPS at any given time. Counsel asserts that this information necessarily reflects security measures and surveillance techniques that could create a risk to the safety of persons or property and is thus exempt from disclosure.<sup>6</sup>

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<sup>5</sup> On June 7, 2012, the complaint was referred to mediation. On September 27, 2012, the complaint was referred back from mediation.

<sup>6</sup> The Complainant submitted an e-mail to the GRC on October 21, 2012 clarifying that his OPRA request sought only when the particular car was parked at the HSP Station in Trenton. However, a review of the original OPRA request at issue in this complaint indicates that same sought drastically more detailed information. John Fano v. New Jersey Department of Human Services, Office of Legal & Regulatory Affairs, 2012-148 – Findings and Recommendations of the Executive Director

## Analysis<sup>7</sup>

### 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 provides that:

“[a] government record shall not include the following information which is deemed to be confidential ... security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software ...” N.J.S.A. 47:1A-1.1.

In Rivera, the complainant sought duty logs for all personnel to include “... normal duty and overtime details ...” The Council, citing to McElwee, *supra*, determined that the responsive records “... necessarily include details regarding surveillance techniques and staffing levels.” *Id.* at 18. The Council reached a similar conclusion regarding the disclosure of daily shift schedules. *See Durham v. New Jersey Department of Corrections*, GRC Complaint No. 2012-35 (March 2013)(holding that disclosure of the schedules could pose a significant risk to the safe and secure operation of the New Jersey State Prison for the reasons raised by the custodian).

Here, the records at issue are GPS records for the primary vehicle of a specifically identified HSP officer over approximately 14 months. Access to the GPS records over such a broad time frame would necessarily allow anyone in possession of said records to predict the possible position of the vehicle at any given time based on previous assignments. Disclosure of the records would also provide insight into whether the vehicle and, by association, the HSP officer, was involved in surveillance assignments. Thus, the records inherently disclose the type of security and surveillance information that is exempt under OPRA.

Therefore, since the responsive records likely contain information regarding “... security measures and surveillance techniques ...” that could create a risk to the HSP officer identified in the Complainant’s OPRA request, same are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. As such, the Custodian has borne her burden of proving a lawful denial of access to the responsive GPS records. N.J.S.A. 47:1A-6.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that since the responsive records likely contain information regarding “... security measures and surveillance techniques ...” that could create a risk to the Human Services Police officer identified in the

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<sup>7</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

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Complainant's OPRA request, same are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. As such, the Custodian has borne her burden of proving a lawful denial of access to the responsive GPS records. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Senior Case Manager

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

May 21, 2013