



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

September 24, 2013 Government Records Council Meeting

John Connolly
Complainant

Complaint No. 2013-59

v.

Township of Montville (Morris)
Custodian of Record

At the September 24, 2103 public meeting, the Government Records Council (“Council”) considered the September 17, 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 requested record is a police incident report and meets the criteria for a criminal investigatory record. Therefore, it is not a government record as defined under OPRA and not subject to public access. Thus, the Custodian did not unlawfully deny access to said record. N.J.S.A. 47:1A-1.1. See also Nance v. Scotch Plains Police Dep’t, GRC Complaint No. 2003-125 (January 2005); Rivera v. Passaic County Sheriff’s Office, GRC Complaint No. 2010-152 (May 2011).

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 24th Day of September, 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: September 26, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 24, 2013 Council Meeting**

**John Connolly¹
Complainant**

GRC Complaint No. 2013-59

v.

**Township of Montville (Morris)²
Custodial Agency**

Records Relevant to Complaint: Copy of Montville Police Department incident report number 13-2147 involving a burglary and theft.

Custodian of Records: Gertrude Atkinson

Request Received by Custodian: February 14, 2013

Response Made by Custodian: February 20, 2013

GRC Complaint Received: February 21, 2013

Background³

Request and Response:

On February 14, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed record. On February 20, 2013, the third (3rd) business day following receipt of said request, the Custodian responded in writing denying the request because she stated the record was exempt from disclosure as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On February 21, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that he reported a burglary and theft of his property, which included identification cards, to the Montville Police Department on February 10, 2013, and requested but was refused a copy of the report. The Complainant states that on February 14, 2013, he submitted an OPRA request seeking said report and on February 20, 2013, the Custodian denied the request as a criminal investigatory record. The Complainant

¹ No legal representation listed on record.

² Represented by Robert H. Gostdyk, Esq., of Murphy McKeon, PC (Riverdale, 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.

asserts that the investigation of the reported incident would have been completed on a separate investigative report and not attached to the incident report.

The Complainant further asserts that N.J.S.A. 2C:21-17.6 provides that a person who reasonably believes or reasonably suspects that he has been the victim of identity theft in violation of N.J.S.A. 2C:21-1 or N.J.S.A. 2C:21-17 may contact the local law enforcement agency in the jurisdiction where he resides, which shall take a police report of the matter and provide the complainant with a copy of that report.

Statement of Information:

On March 18, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on February 14, 2013, and that she responded to the request on February 19, 2013.⁴ The Custodian denied the requested record as a criminal investigatory record exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. In support of the denial the Custodian cites to Feggans v. City of Newark, GRC Complaint No. 2007-238 (June 2008), in which the Council held that police incident reports are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

Analysis⁵

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.

Criminal investigatory records are exempt from disclosure. N.J.S.A. 47:1A-1.1. A criminal investigatory record is defined 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...” Id.

Here, the requested record is a police incident report.⁶ The Council has long held that police incident reports are criminal investigatory records. *See* Nance v. Scotch Plains Police Dep’t, GRC Complaint No. 2003-125 (January 2005). *See also* Rivera v. Passaic County Sheriff’s Office, GRC Complaint No. 2010-152 (May 2011).

⁴ The evidence of record reveals that the Custodian e-mailed the response to the Complainant on February 20, 2013.

⁵ 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.

⁶ The Complainant also stated that N.J.S.A. 2C:21-17.6 provides that a person who reasonably believes that he has been the victim of identity theft may locally file a police report regarding the matter and be entitled to a copy of that report. This statute does not apply here, however, because the Complainant filed a burglary report, not an identity theft report.

Accordingly, the requested record is a police incident report and meets the criteria for a criminal investigatory record. Therefore, it is not a government record as defined under OPRA and not subject to public access. Thus, the Custodian did not unlawfully deny access to said record. N.J.S.A. 47:1A-1.1. See also Nance v. Scotch Plains Police Dep't, GRC Complaint No. 2003-125 (January 2005); Rivera v. Passaic County Sheriff's Office, GRC Complaint No. 2010-152 (May 2011).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the requested record is a police incident report and meets the criteria for a criminal investigatory record. Therefore, it is not a government record as defined under OPRA and not subject to public access. Thus, the Custodian did not unlawfully deny access to said record. N.J.S.A. 47:1A-1.1. See also Nance v. Scotch Plains Police Dep't, GRC Complaint No. 2003-125 (January 2005); Rivera v. Passaic County Sheriff's Office, GRC Complaint No. 2010-152 (May 2011).

Prepared By: John E. Stewart, Esq.

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

September 17, 2013