



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

May 26, 2015 Government Records Council Meeting

Clifford Wares
Complainant

Complaint No. 2014-274

v.

Township of West Milford (Passaic)
Custodian of Record

At the May 26, 2015 public meeting, the Government Records Council (“Council”) considered the May 19, 2015 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:

1. Notwithstanding the Custodian’s search for responsive records, records of internal or external grievances and complaints pertaining to excessive force and falsifying police reports are exempt from disclosure as personnel records. N.J.S.A. 47:1A-10. See also Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because such records are exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.
2. The Custodian did not unlawfully deny access to the Complainant’s request for internal affairs complaints because such records are exempt from public access pursuant to the Attorney General’s Internal Affairs Policy & Procedure, which classifies these records as confidential. See Blaustein v. Lakewood Police Dep’t (Ocean), GRC Complaint No. 2011-102 (June 2012), and Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010). N.J.S.A. 47:A1-6.

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 26th Day of May, 2015

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: May 28, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 26, 2015 Council Meeting**

**Clifford Wares¹
Complainant**

GRC Complaint No. 2014-274

v.

**Township of West Milford (Passaic)²
Custodial Agency**

Records Relevant to Complaint:

The police personnel files (specifically, any internal or external grievances and complaints) of the following officers:

- 1) Police Chief Gene Chiosie
- 2) Detective Sergeant Robert Congleton
- 3) Detective John Pesenti
- 4) Patrol Officer Casey Casbarro
- 5) Dispatcher Sally R. Somers

Specific types of grievances and complaints include excessive force, falsifying police reports, and internal affairs complaints.

Custodian of Records: Antoinette Battaglia
Request Received by Custodian: July 8, 2014
Response Made by Custodian: July 10, 2014
GRC Complaint Received: July 29, 2014

Background³

Request and Response:

On July 8, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On July 10, 2014, the Custodian responded in writing, denying access to internal grievances of the identified individuals pursuant to N.J.S.A. 47:1A-10 and Executive Order 11 (Governor Byrne, 1963). Regarding the Complainant’s request

¹ No legal representation listed on record.

² Represented by Fred Semrau, Esq., of Dorsey & Semrau, Attorneys at Law (Boonton, 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.

for external grievances and complaints (including complaints over the use of force and falsifying police reports), the Custodian stated that a review of records from January 1, 2014, to July 10, 2014, failed to locate any responsive records.

Denial of Access Complaint:

On July 29, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not elaborate on any objection to being denied access to the requested records.

Statement of Information:

On August 21, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian provided a copy of her letter, dated July 10, 2014, to the Complainant as the basis for her denial of access. The Custodian also certified that she provided the Complainant with a document detailing information explicitly subject to disclosure under N.J.S.A. 47:1A-10 for each identified individual within the Complainant’s 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.

Regarding requests for personnel information, OPRA mandates that:

[T]he personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access[.]

N.J.S.A. 47:1A-10.

The records at issue are the personnel files of five (5) members of the West Milford Police Department. Specifically, the Complainant sought copies of any internal or external grievances or complaints pertaining to excessive force or falsifying police reports.

The Council has previously adjudicated complaints in which the records requested were complaints filed against police officers. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), the Council held that:

[t]he Complainant's request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent [part] that "the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access" [emphasis added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

Further, in Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010), the Council held that:

[a]lthough the Custodian violated OPRA at N.J.S.A. 47:1A-5.g by failing to provide a response to the Complainant's request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and [Merino, GRC No. 2003-110].

Notwithstanding the Custodian's search for responsive records, records of external grievances and complaints pertaining to excessive force and falsifying police reports are exempt from disclosure as personnel records. N.J.S.A. 47:1A-10. *See also* Merino, GRC No. 2003-110, and Vaughn, GRC No. 2009-177. As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because such records are exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.

Internal Affairs Investigations/Records

Although the Custodian was silent as to the Complainant's request for internal affairs complaints, the GRC notes that such records are not personnel records pursuant to the Attorney General's Internal Affairs Policy & Procedure ("IAPP").⁴ *See* Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012). Moreover, the GRC has held that the IAPP and other Attorney General Guidelines have the force of law. *See* Id. (*citing* O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009)).

Nevertheless, the IAPP exempts internal affairs records from disclosure. The IAPP provides that "[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information."⁵ In Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010), the Administrative Law Judge held that internal affairs reports are confidential records not subject to OPRA, relying upon the IAPP guidelines.

The Custodian did not unlawfully deny access to the Complainant's request for internal affairs complaints because such records are exempt from public access pursuant to the IAPP,

⁴ The IAPP was promulgated via the Division of Criminal Justice in the New Jersey Department of Law and Public Safety. All GRC references to the IAPP are to the July 2014 revision of the document.

⁵ IAPP, Internal Affairs Records, pg. 42.

which classifies these records as confidential. *See* Blaustein, GRC No. 2011-102, and Rivera, GRC No. 2007-222. N.J.S.A. 47:A1-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Notwithstanding the Custodian's search for responsive records, records of internal or external grievances and complaints pertaining to excessive force and falsifying police reports are exempt from disclosure as personnel records. N.J.S.A. 47:1A-10. *See also* Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because such records are exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.
2. The Custodian did not unlawfully deny access to the Complainant's request for internal affairs complaints because such records are exempt from public access pursuant to the Attorney General's Internal Affairs Policy & Procedure, which classifies these records as confidential. *See* Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012), and Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010). N.J.S.A. 47:A1-6.

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

May 19, 2015