



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**

**March 31, 2015 Government Records Council Meeting**

Ryan Hockensmith  
Complainant

Complaint No. 2014-288

v.

Atlantic County Prosecutor's Office  
Custodian of Record

At the March 31, 2015 public meeting, the Government Records Council ("Council") considered the March 24, 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 because the responsive videos are a criminal investigatory record, the Custodian has borne her burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Solloway v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-39 (January 2013); Reitzler v. Egg Harbor Police Dep't (Atlantic), GRC Complaint No. 2011-85 (January 2013); Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013).

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 31<sup>st</sup> Day of March, 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: April 2, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 31, 2015 Council Meeting**

**Ryan Hockensmith<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-288**

v.

**Atlantic County Prosecutor's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of video evidence pertaining to the arrest of Ray Rice, including but not limited to surveillance footage of the inside of the elevator.

**Custodian of Record:** Kathleen E. Bond

**Request Received by Custodian:** August 6, 2014

**Response Made by Custodian:** August 8, 2014

**GRC Complaint Received:** August 11, 2014

**Background<sup>3</sup>**

**Request and Response:**

On August 5, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On August 8, 2014, the Custodian responded in writing denying access to the responsive records, if they exist, under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

**Denial of Access Complaint:**

On August 11, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that the Ray Rice arrest was a national news story and has remained in the headlines since that time. The Complainant noted that a sizeable piece of evidence has already been disclosed, reported on, and analyzed by national news outlets. The Complainant asserted that a key piece of evidence yet to be disclosed is the video from inside the elevator.

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

<sup>2</sup> Represented by Cary Shill, Esq. (Mays Landing, NJ).

<sup>3</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.

The Complainant argued that he believes that disclosure of the footage is warranted because of the importance of accurate reporting of the incident. Further, the Complainant asserted that disclosure is warranted because the case is now closed. The Complainant contended that there is more harm in nondisclosure because of the resulting national conversation of domestic violence.

#### Statement of Information:

On September 5, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 6, 2014. The Custodian affirmed that she reviewed the entire case file relating to Ray Rice. The Custodian certified that she responded to the Complainant in writing on August 8, 2014, denying access to the responsive records.

The Custodian stated that in Solloway v. Bergen Cnty. Prosecutor’s Office, GRC Complaint No. 2011-39 (January 2013), the Council defined criminal investigatory records as those records not required by law to be made, maintained, or kept on file that are held by a law enforcement agency and which pertain to any criminal investigation or related civil enforcement proceeding. The Custodian asserted that she appropriately denied access to the responsive video surveillance evidence under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; Executive Order No. 69 (Gov. Whitman, 1997); Janeczko, GRC 2002-79 and 2002-80.

### Analysis

#### Preface

The records at issue in this complaint stem from a high profile incident involving Ray Rice, a player for the Baltimore Ravens in the National Football League (“NFL”) and his then fiancée, Janay Palmer, in a New Jersey Casino early in the morning on February 15, 2014. On the morning of the incident, law enforcement responded to a report of an altercation between Mr. Rice and his fiancée at Revel Casino in Atlantic City: both were arrested. Soon thereafter, media outlet TMZ obtained and circulated a video showing Mr. Rice removing his seemingly unconscious fiancée from an elevator.

On March 27, 2014, Mr. Rice was indicted on aggravated assault charges, while Ms. Palmer’s charges were dropped. Reports later noted that Ms. Palmer admitted that she did not want to prosecute the case but that the State of New Jersey chose to proceed. Following Mr. Rice’s acceptance into a pretrial intervention program and the NFL’s subsequent suspension of Mr. Rice for two (2) games, news of the existence of a video from inside the elevator where the incident occurred prompted national media outlets, among other groups, to attempt to obtain access to the video.<sup>4</sup> On September 8, 2014, TMZ was able to obtain the video from inside the elevator from unknown sources and circulate same. Subsequent to the circulation of the video, it was widely run by most national media outlets over the ensuing weeks.

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<sup>4</sup> The GRC notes that the Complainant is an employee of one of those outlets, ESPN.

Notwithstanding the high profile nature of the incident to which the responsive records are related, the Council's review of this complaint is focused solely on whether the Custodian unlawfully denied access to the responsive records under OPRA.

### **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.

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 Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). In Janeczko, 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." *See also* Solloway v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-39 (January 2013); Reitzler v. Egg Harbor Police Dep't (Atlantic), GRC Complaint No. 2011-85 (January 2013); Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013).

In the instant matter, the records at issue in this complaint were videos taken from the Revel Casino on the night of the incident between Mr. Rice and Ms. Palmer. The ACPO actively pursued the case, which initially involved charges against both individuals and a subsequent indictment of Mr. Rice for aggravated assault. Thus, it is obvious that the records pertain to a criminal investigation. Further, there is no indication that any law requires the video to be made, maintained, or kept on file. Although the case was closed at the time of the Complainant's OPRA request, the GRC's longstanding precedent in Janeczko is that the status of the case does not affect the application of the criminal-investigatory exemption on a record. Further, the GRC has routinely held that records contained within a criminal file relating to an investigation of that crime fall within the criminal investigatory exemption. The GRC is similarly satisfied here that the videos are exempt for that reason.

Therefore, because the responsive videos are a criminal investigatory record, the Custodian has borne her burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko, GRC 2002-79 and GRC 2002-80; Solloway, GRC 2011-39; Reitzler, GRC 2011-85; Hwang, GRC 2011-348.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the responsive videos are a criminal investigatory record, the Custodian has borne her burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Solloway v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-39 (January 2013); Reitzler v. Egg Harbor Police Dep't (Atlantic), GRC Complaint No. 2011-85 (January 2013); Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013).

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

Approved By: Dawn R. SanFilippo  
Deputy Executive Director

March 24, 2015