



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

February 21, 2017 Government Records Council Meeting

Richard Smith
Complainant

Complaint No. 2015-287

v.

Irvington Police Department (Essex)
Custodian of Record

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 2017 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian lawfully denied access to the Complainant’s September 8, 2015 OPRA request for full police incident reports for all crimes classified as robberies, strong armed robberies, armed robberies, and shootings. N.J.S.A. 47:1A-6. Police incident reports classified as such are exempt as criminal investigatory records, because they relate to criminal investigative activities and therefore “pertain[] to [a] criminal investigation.” N.J.S.A. 47:1A-1.1; North Jersey Media Group, Inc. (“NJMG”) v. Twp. of Lyndhurst, 441 N.J. Super. 70, 105-106 (App. Div. 2015) appeal docketed, A-35-15 North Jersey Media Group, Inc. v. Twp. of Lyndhurst (076184).

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 21st Day of February, 2017

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 23, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 21, 2017 Council Meeting**

**Richard Smith¹
Complainant**

GRC Complaint No. 2015-287

v.

**Irvington Police Department (Essex)²
Custodial Agency**

Records Relevant to Complaint:

1. "I am requesting FULL police incident reports for all crimes in the Township of Irvington NJ that are classified as Robberies, Strong Armed Robberies, and Armed Robberies that occurred between the dates January 1, 2015 to August 28, 2015"
2. "I am requesting FULL police incident reports for all crimes in the Township of Irvington NJ that are classified as Shootings that occurred between the dates January 1, 2015 to August 31, 2015 (with and without bodily injuries)."

Custodian of Record: Sgt. Douglas Polk
Request Received by Custodian: September 8, 2015
Response Made by Custodian: September 8, 2015
GRC Complaint Received: September 9, 2015

Background³

Request and Response:

On September 8, 2015, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing, denying access and stating that the request seeks criminal investigatory records that are exempt under N.J.S.A. 47:1A-1.1. However, the Custodian added that criminal investigatory information as described under N.J.S.A. 47:1A-3(b) can be made available upon request. The Custodian asked the Complainant whether such information would adequately respond to his OPRA request.

¹ No legal representation listed on record.

² Represented by Evelyn Akushi-Onyeani, Esq. (Irvington, 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.

Denial of Access Complaint:

On September 9, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he has never been denied access to non-investigatory police incident reports by any other municipality until now. The Complainant added that information in police incident reports has been made public for awareness and transparency.

Statement of Information:

On March 30, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 8, 2015. The Custodian then certified that he replied that same day, denying access to the requested records because they are criminal investigatory records under N.J.S.A. 47:1A-1.1. However, the Custodian certified that he offered to provide access to criminal investigatory information for the requested time as described under N.J.S.A. 47:1A-3(b).

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.

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. N.J. 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.”

Recently, the Appellate Division discussed how and when a document “pertains” to a criminal investigation. North Jersey Media Group, Inc. (“NJMG”) v. Twp. of Lyndhurst, 441 N.J. Super. 70, 103 (App. Div. 2015) appeal docketed, A-35-15 North Jersey Media Group, Inc. v. Twp. of Lyndhurst (076184). There, the court highlighted examples of police activity that would not pertain to a criminal investigation, such as assisting an injured citizen in an accident, which may be logged under a police report or incident report. Id. at 105. However, the court concluded that the plaintiff’s request for incident reports and police reports are all exempt as criminal investigatory records:

[T]o the extent the entries concern or address an officer's involvement in the search for the attempted burglary suspect, the pursuit of Ashford and Bynes once they were identified as suspects, the shooting of Ashford and arrest of Bynes, the subsequent investigational activities related to Bynes's arrest, and the [Shooting Response Team] investigation of the fatal shooting.”

[NJMG, 441 N.J. Super. at 106].

The court held that the events described above constituted “criminal investigative activities” that sufficiently pertain to an investigation for the purposes of the criminal investigatory records exemption. Id. at 105-106.

The court also discussed the obligations of the responding agency in providing information pertaining to an investigation before and after an arrest, as described under N.J.S.A. 47:1A-3(b). Id. at 112. The court rejected the argument that §3(b) entitles the requestor to a specific record if it contains the requisite information, stating in part:

[T]he word "information," as used in the statute, is not synonymous with tangible records, such as written documents, notes, or recordings that contain the specified information. The required "information" may be conveyed in a newly drafted press release. Conceivably, the information could be provided in a public oral announcement.

[Id.]

Therefore, notwithstanding whether the criminal investigatory record contains §3(b) information, a requestor is not entitled access to the record itself. Id. at 113. Instead, the requestor is only entitled to the §3(b) information, unless the Custodian can show that disclosure of such information would “jeopardize the safety of any person or jeopardize any investigation in progress[.]” N.J.S.A. 47:1A-3(b).

In the current matter, the Complainant sought police incident reports pertaining to specific criminal acts over a period of time in the Township of Irvington. Similar to the plaintiff’s request in NJMG, 441 N.J. Super. at 81-82, which sought police reports and incident reports pertaining to an officer-involved shooting of a criminal suspect, the Complainant here explicitly sought police incident reports of crimes categorized as “robberies” and “shootings.” Police incident reports so classified unambiguously “relate[] to criminal investigative activities,” and fall under OPRA’s criminal investigatory records exemption, with exceptions made for information required to be disclosed under §3(b). Id. at 105; N.J.S.A. 47:1A-1.1.

Therefore, the Custodian lawfully denied access to the Complainant’s September 8, 2015 OPRA request for full police incident reports for all crimes classified as robberies, strong armed robberies, armed robberies, and shootings. N.J.S.A. 47:1A-6. Police incident reports classified as such are exempt as criminal investigatory records, because they relate to criminal investigative activities and therefore “pertain[] to [a] criminal investigation.” N.J.S.A. 47:1A-1.1; NJMG, 441 N.J. Super. at 105-106.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's September 8, 2015 OPRA request for full police incident reports for all crimes classified as robberies, strong armed robberies, armed robberies, and shootings. N.J.S.A. 47:1A-6. Police incident reports classified as such are exempt as criminal investigatory records, because they relate to criminal investigative activities and therefore "pertain[] to [a] criminal investigation." N.J.S.A. 47:1A-1.1; North Jersey Media Group, Inc. ("NJMG") v. Twp. of Lyndhurst, 441 N.J. Super. 70, 105-106 (App. Div. 2015) appeal docketed, A-35-15 North Jersey Media Group, Inc. v. Twp. of Lyndhurst (076184).

Prepared By: Samuel A. Rosado
Staff Attorney

February 14, 2017