



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2019 Government Records Council Meeting

Robert C. Scutro
Complainant

Complaint No. 2016-315 and 2016-316

v.

County of Union
Custodian of Record

At the February 26, 2019 public meeting, the Government Records Council (“Council”) considered the February 19, 2019 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 Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s October 18, 2016 and October 28, 2016 OPRA requests seeking security camera footage of a former public employee and of himself at various locations. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA’s exemptions to protect security and surveillance information and techniques. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159, 175-76 (2016). As such, the Council declines to address the other defenses raised by the Custodian in both matters.

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 February, 2019

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: March 1, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
February 26, 2019 Council Meeting**

**Robert C. Scutro¹
Complainant**

GRC Complaint No. 2016-315 and 2016-316

v.

**County of Union²
Custodial Agency**

Records Relevant to Complaint:

October 18, 2016 OPRA Request:³ Electronic copies via e-mail of security camera footage in Mr. Armstead's office or at the entrance to his office to compare with his time sheets. If no camera footage is available for the above locations, video footage of Mr. Armstead going to work on a daily basis.⁴

October 28, 2016 OPRA Request:⁵ Electronic copies via e-mail of:

1. Entrance and front counter video footage to show what time the Complainant arrived and the times the Complainant left.
2. Video footage of the East parking lot and rear parking lot that shows the Complainant arriving, walking back and forth through the lot and leaving.⁶

Custodian of Record: James Pellettiere⁷

Request Received by Custodian: October 18, 2016; October 28, 2016

Response Made by Custodian: October 28, 2016; November 9, 2016; November 30, 2016

GRC Complaint Received: December 12, 2016

¹ No legal representation listed on record.

² Represented by April C. Bauknight, Esq., Assistant County Counsel (Elizabeth, NJ).

³ This request is the subject of GRC 2016-315.

⁴ The Complainant requested additional records not at issue in this complaint.

⁵ This request is the subject of GRC 2016-316.

⁶ The Complainant requested additional records not at issue in this complaint.

⁷ The current Custodian of Record is Joanne Rajoppi.

Background⁸

Request and Response:

October 18, 2016 OPRA Request

On October 18, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 28, 2016, Marlena M. Russo (“Ms. Russo”), on behalf of the Custodian, responded in writing providing copies of the requested time sheets. Ms. Russo also stated that an extension was needed to fulfill the remainder of the request. Ms. Russo stated that a final response was expected by November 1, 2016.

On November 1, 2016, Ms. Russo e-mailed the Complainant stating that additional time was needed to respond and provided a new response date of November 21, 2016. On November 21, 2016, Ms. Russo sought another extension with a new deadline of December 5, 2016.

On November 30, 2016, Ms. Russo responded to the Complainant in writing, denying access to the camera footage in accordance with the security exemption under OPRA. N.J.S.A. 47:1A-1.1.

October 28, 2016 OPRA Request

On October 28, 2016, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On November 9, 2016, the Custodian responded in writing providing a copy of the requested log-in sheet. The Custodian also stated there were no security cameras in the parking lot of the Administration Building. Additionally, the Custodian stated that the security camera footage of the Complainant entering and leaving the Administration Building was exempt in accordance with OPRA’s security exception.

Denial of Access Complaint:

On December 12, 2016, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council (“GRC”).

October 18, 2016 OPRA Request

The Complainant asserted that the Custodian could not use the security measures and surveillance techniques exemption under OPRA pursuant to Gilleran v. Twp. of Bloomfield, 440 N.J. Super. 490 (App. Div. 2015). The Complainant contended that the cameras subject to the request were in plain view to the public and put in place to monitor and record daily activities.

The Complainant also asserted that there were no laws or regulations in Union County that prohibited him from recording Mr. Armstead entering and leaving the office building where he

⁸ 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

worked. The Complainant also asserted that there were no rules preventing him from recording Mr. Armstead coming and going from outside his office. The Complainant argued that Union County knew the relevant case law and lack of prohibitions towards recording in public. Thus, the Complainant contended that the Custodian knowingly and willfully denied access to his OPRA request.

October 28, 2016 OPRA Request

The Complainant first contended that the Custodian's assertion that there are no security cameras located at the Administration Building's parking lots was false. The Complainant attached photographs of cameras he contended were located at the parking lots in question.

The Complainant then asserted that the Custodian could not use the security measures and surveillance techniques exemption under OPRA pursuant to Gilleran, 440 N.J. Super. at 490. Additionally, the Complainant asserted that the Custodian should have reviewed the footage to determine whether any security risks existed prior to responding. See Gilleran, 440 N.J. Super. at 500.

Statement of Information:

On January 4, 2017, the Custodian filed a Statement of Information ("SOI") for each Denial of Access Complaint.

October 18, 2016 OPRA Request

The Custodian certified that he received the Complainant's OPRA request on October 18, 2016. The Custodian certified that impacted departments were contacted to determine whether security camera footage existed. The Custodian certified that Ms. Russo responded in writing on his behalf on November 30, 2016, denying access to the security camera footage.

The Custodian asserted that the Complainant's reliance on the Appellate Division was incorrect, as the New Jersey Supreme Court reversed them in Gilleran v. Bloomfield, 227 N.J. 159 (2016). The Custodian contended that the decision supported the denial of access as release of the footage would expose security and surveillance vulnerabilities to potential wrongdoers.

Additionally, the Custodian argued that the building where Mr. Armstead worked at housed a variety of businesses, including a therapist's office and other social services programs. Thus, in addition to the security exemption under OPRA, the Custodian contended that the footage was exempt pursuant to the Health Insurance Portability and Accountability Act ("HIPAA").

October 28, 2016 OPRA Request

The Custodian certified that he received the Complainant's OPRA request on October 28, 2016. The Custodian certified that the requested was forwarded to the Union County Sheriff's office for processing. The Custodian certified that he responded in writing on November 9, 2016

asserting that no security cameras were located at the parking lots and denying access to the other security camera footage.

Like GRC 2016-315 above, the Custodian asserted that Gilleran supported the denial of access, as release of the footage would expose security and surveillance vulnerabilities to potential perpetrators. 227 N.J. at 176.

Additionally, the Custodian stated that depending on which parking lot the Complainant is referring to, there may not be any footage available. However, the Custodian contended that even if such footage did exist, it would still be exempt from access. The Custodian asserted that the angles of the footage revealed the focus of the cameras as well as blind spots. The Custodian contended that releasing the other requested footage may reveal additional weaknesses with Union County's security procedures.

Additional Submissions:

On January 5, 2017, the Complainant responded to the Custodian's SOI via e-mail, objecting to the reasons why his request was denied.

October 18, 2016 OPRA Request

The Complainant first argued that HIPAA is inapplicable, as that law only protects an individual's medical records. The Complainant contended that video footage of individuals entering and leaving a public building does not fall under HIPAA protections, even if the building contains a medical office.

Additionally, the Complainant asserted that the office building was located in a public area, where there were no restrictions on recording video or taking photographs. Thus, the Complainant asserted that there would not be any security risk. The Complainant also contended that the responsive footage should have been reviewed by the Custodian to determine whether a security risk in fact existed. By comparison, the Complainant referenced security cameras at the Union County Courthouse, where they were easily located, and the public can view the security camera monitors at the entrance hall. The Complainant contended that if the public could view footage from a secure courthouse, he should be allowed to view footage of a public office building.

October 28, 2016 OPRA Request

The Complainant asserted that there were no safety or surveillance techniques within the viewable area of the security cameras. The Complainant also stated that members of the public were able to view the camera footage in the lobby by walking around the front desk at the entrance. Lastly, the Complainant contended that the Custodian should have reviewed the footage to determine whether any security issue existed.

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.

Two (2) of OPRA’s exemptions pertain to records excluded on security-related grounds. One exemption pertains to “security information or procedures . . . which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1. The other exemption pertains to “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.” Id.

Regarding the disclosure of security camera footage, the Court in Gilleran held that, taken together, both exemptions “endeavor to keep from public scrutiny a swath of information that, if disclosed, would jeopardize or would undermine the effectiveness of the security system for public buildings (property) and the people within them.” 227 N.J. at 172.

The Court maintained that a determination of access to camera footage requires more than analyzing the specific content contained in the footage:

[T]he scope of the camera's surveillance area (the width, depth, and clarity of the images, as well as when it operates, i.e. intermittently and, if so, at what intervals and are they regular) is the information that the Township seeks to protect. That the video may contain depictions of otherwise non-confidential views of an area outside a public building or may capture persons moving in a public area is not a complete way in which to assess the security worth of this requested government record. Such analysis provides a stunted review for addressing the purpose underlying the security exemptions.

[Id. at 175-76.]

Thus, the Court held that, “when the public-security concern is that access to the videotape product of the surveillance medium itself reveals security-compromising information, then the exemptions can be relied on to bar, categorically, under OPRA, a security system's otherwise confidential surveillance product.” Id. at 176.

In both matters, the Complainant sought video camera footage from Union County showing Mr. Armstead going to/from work, or footage from his office; footage of himself entering and leaving Union County’s Administration Building; and footage of the Complainant at the Administration Building’s parking lot. Although the Complainant disputed the risk factors in part based on the content of the footage, the Gilleran Court rejected a similar argument for the purposes of OPRA. Id. at 175-76. The Court held that the release of any security camera footage invokes

the security and surveillance exemptions under OPRA. Id. As noted by the Custodian, the release of such footage publicizes the viewable area of the security cameras, which in turn can reveal blind spots and areas of obstruction.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's October 18, 2016 and October 28, 2016 OPRA requests seeking security camera footage of a former public employee and of himself at various locations. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA's exemptions to protect security and surveillance information and techniques. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. at 175-76. As such, the Council declines to address the other defenses raised by the Custodian in both matters.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's October 18, 2016 and October 28, 2016 OPRA requests seeking security camera footage of a former public employee and of himself at various locations. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA's exemptions to protect security and surveillance information and techniques. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159, 175-76 (2016). As such, the Council declines to address the other defenses raised by the Custodian in both matters.

Prepared By: Samuel A. Rosado
Staff Attorney

February 19, 2019