



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

## FINAL DECISION

### April 28, 2020 Government Records Council Meeting

Michael Schulze  
Complainant

Complaint No. 2018-108

v.

Monmouth County Sheriff's Office  
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council ("Council") considered the April 21, 2020 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 video surveillance camera footage is exempt from disclosure under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Monmouth County Courthouse and would create a risk to the safety of the persons therein. Thus, the Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-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 28<sup>th</sup> Day of April 2020

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 30, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 28, 2020 Council Meeting**

**Michael Schulze<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-108**

v.

**Monmouth County Sheriff's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of a digital copy of the video surveillance footage of a courtroom incident that took place in Monmouth County Courthouse ("MCC") on April 2, 2018.<sup>3</sup>

**Custodian of Record:** Cynthia Scott  
**Request Received by Custodian:** April 12, 2018  
**Response Made by Custodian:** June 1, 2018  
**GRC Complaint Received:** June 4, 2018

**Background<sup>4</sup>**

**Request and Response:**

On April 12, 2018, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 14, 2018, the Custodian e-mailed the Complainant asking him to contact her about the requested video. On May 15, 2018, the Complainant e-mailed the Custodian requesting a decision of the County counsel regarding the release of said footage. On June 1, 2018, the Custodian responded in writing denying the Complainant access pursuant to the emergency and security exemptions in N.J.S.A. 47:1A-1.1.

**Denial of Access Complaint:**

On June 4, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he was the County Sheriff's Officer involved in the above-mentioned incident. The Complainant further asserted that he was the victim in the incident. The Complainant contended that he was acting in performance of his job duties and required surgery as a result of the incident. The Complainant argued that he should be provided

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

<sup>2</sup> Represented by Patricia B. Quelch, Esq., Helmer, Conley & Kasselmann, P.A. (Freehold, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</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.

Michael Schulze v. Monmouth County Sheriff's Office, 2018-108– Findings and Recommendations of the Executive Director

with the requested footage because news cameras routinely recorded MCC proceedings and aired them publicly. The Complainant further argued that the records sought were for his own retainment and not for distribution.

#### Statement of Information:

On July 13, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 12, 2018. The Custodian certified that her search revealed that the above-mentioned incident was caught on the building’s closed-circuit television system. The Custodian certified that upon receipt of the Complainant’s OPRA request she preserved the desired video surveillance footage. The Custodian certified that she responded in writing on June 1, 2018, denying access to the requested footage.

The Custodian asserted that the Complainant’s OPRA request was denied based on security exclusions pursuant to N.J.S.A. 47:1A-1.1. The Custodian cited Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016) asserting that “[t]he valid security concerns against the release of security videos of the outside of a public building expressed in the Supreme Court’s opinion . . . are equally applicable to security within a public building.” The Custodian asserted that the Gilleran analysis against disclosure “comports” with Executive Order No. 21 (Gov. McGreevey 2002) which exempts from disclosure records that “. . . would substantially interfere with the State’s ability to protect and defend the State and its citizens against acts of sabotage and terrorism, or which, if disclosed would materially increase risk or consequence of potential acts of sabotage or terrorism.” Id. See also Cardillo v. City of Hoboken (Zoning Officer), GRC Complaint No. 2005-158 (2006).

The Custodian attached an inter-office memorandum dated December 3, 2012 illustrating the MCC’s policy regarding the release of video surveillance footage under OPRA. The Custodian asserted that she successfully demonstrated that “the security tool (here, the camera) produces information that, if disclosed, would create a risk to the security of the building or the persons therein because of the revealing nature of the product of that tool.”

The Custodian argued that the Complainant’s reference to courtroom news coverage in favor of disclosure was erroneous. The Custodian contended that courtroom news coverage must obtain prior permission from the MCC and is therefore permitted. The Custodian further argued that televised news coverage does not expose the scope or integrity of the courthouse security cameras.

Additionally, the Custodian asserted that the fact that the Complainant is a County Sheriff’s Officer is of no consequence. The Custodian argued that OPRA does not contemplate the status of the requestor or the purpose of the request; those factors are considered in common law records requests. See K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 359-60 (App. Div. 2011).

### 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. First, OPRA exempts access 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. Second, OPRA exempts access 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 Gilleran Court 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.” Id. 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 the instant complaint, the Complainant, a County Sheriff’s Officer, sought a digital copy of the video surveillance footage of an incident that took place in a County courtroom when he was on duty. The Complainant noted that he was the victim in the incident and sustained injuries. The Complainant asserted that he requested a copy of the video surveillance footage for his own records. The Custodian replied in writing denying access to the footage under N.J.S.A. 47:1A-1.1 citing Gilleran, 227 N.J. 159. In the SOI, the Custodian contended that the release of said footage would expose the scope of security cameras and undermine the purpose of the security systems in MCC.

Gilleran supports finding that the Custodian lawfully denied access to the requested security camera footage. In reaching this conclusion, the GRC agrees with the Supreme Court in its concerns for disclosure of security camera footage. Safety measures in place in New Jersey’s government facilities is of paramount importance. Those measures necessarily include

safeguarding security camera footage from disclosure to anyone under OPRA. Further, and as noted by the Gilleran Court, “[c]ompelling the wholesale release . . . of videotape product of any security camera . . . would reveal information about a system’s operation and also its vulnerabilities.” Id. at 176.

Additionally, the Complainant’s status as the County Sheriff’s Officer involved in the above-mentioned incident is of no moment. The GRC notes that the Complainant did not insinuate ill intent on using the footage for nefarious purposes. Notwithstanding, there are no “need based exceptions” to OPRA’s security exemption. N.J.S.A. 47:1A-1.1. Disclosure of security camera footage on that basis is not justified; rather, it would eviscerate OPRA’s emergency and security exemptions and disavow the Court’s holding in Gilleran. As noted by the Court in Gilleran, the Complainant’s access to the footage in question is better addressed “under the common law right of access.” Id. at 177.<sup>5</sup>

Therefore, the requested video surveillance camera footage is exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. at 174-77. Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the MCC and would create a risk to the safety of the persons therein. Thus, the Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the requested video surveillance camera footage is exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Monmouth County Courthouse and would create a risk to the safety of the persons therein. Thus, the Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.

Prepared By: Brandon Garcia  
Case Manager

April 21, 2020

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<sup>5</sup> The GRC does not have the authority to address a requestor’s common law right to access records. N.J.S.A. 47:1A7(b); Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013); Kelly v. N.J. Dep’t of Transp., GRC Complaint No. 2010-215 (November 2011) at 2. Thus, the GRC cannot address any common law right of access to the responsive footage.