



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 28, 2020 Government Records Council Meeting

Tariq Elliott
Complainant

Complaint No. 2018-176

v.

Keansburg Police Department (Monmouth)
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 Custodian borne his burden of proof that he lawfully denied access to the Complainant’s April 24, 2018 OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005); Perry v. N.J. Dep’t of Corr., GRC Complaint No. 2012-237 (June 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 28th 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**

**Tariq Elliot¹
Complainant**

GRC Complaint No. 2018-176

v.

**Keansburg Police Department (Monmouth)²
Custodial Agency**

Records Relevant to Complaint:³ A hardcopy via U.S. mail of the motor vehicle recorder (“MVR”) footage dated March 29, 2016 from Officer Jillian Koehler’s police car when transporting the Complainant to the Keansburg Police Department (“KPD”) station.

Custodian of Record: Wayne Davis, Jr.

Request Received by Custodian: May 1, 2018

Response Made by Custodian: May 1, 2018

GRC Complaint Received: August 10, 2018

Background⁴

Request and Response:

On or around April 24, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned record. On May 1, 2018, the Custodian responded in writing stating that no record exists and could not be provided.

Denial of Access Complaint:

On August 10, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that within the requested MVR footage, he gave an oral confession inside Officer Koehler’s police car while being transported. The Complainant contended that because MVR footage was required by law to be made and pertained to a criminal investigation, it was subject to access. The Complainant also asserted that the requested footage fell within the mean of “Brady material” pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d. 215 (1963).

¹ No legal representation listed on record.

² Represented by John O. Bennett, of the Law Office of John O. Bennett (Oceanport, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ 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.

Statement of Information:

On August 30, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 1, 2018. The Custodian certified that MVR footage was automatically downloaded to a server once a police car arrived at Police Headquarters. The Custodian also certified that unless an officer requested to save the footage, it would be overwritten after thirty (30) days. The Custodian certified that he responded in writing on May 1, 2018 stating that no responsive records exist.

The Custodian asserted that the Complainant was arrested in March 2016 for various offenses. The Custodian then asserted that in an investigation report completed by Lieutenant M. Deaney, there was no mention of self-incriminating statements made by the Complainant during transport. The Custodian asserted that he also spoke with Officer Koehler, who advised that the Complainant made no self-incriminating statements during transport. The Custodian asserted that Officer Koehler also informed him that had the Complainant made any self-incriminating statements, she would have documented same in a supplementary report and requested to save the MVR footage as evidence. The Custodian argued that because no such request was made, the MVR footage had been overwritten. The Custodian thus contended that no responsive record existed since the Complainant sought the MVR footage two (2) years after the alleged incident.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). In Perry v. N.J. Dep’t of Corr., GRC Complaint No. 2012-237 (June 2013), the complainant submitted an OPRA request on June 11, 2012, seeking access to surveillance footage recorded on May 9, 2012. The custodian initially denied access under New Jersey Department of Corrections’ regulations, but subsequently certified in the SOI that any recorded footage would have been overwritten prior to the date of the OPRA request in accordance with the retention guidelines. The Council thus held that the custodian lawfully denied access to said records, if any, because none existed. Id. at 4 (citing Pusterhofer, GRC 2005-49). See also Stolte v. N.J. State Police, GRC Complaint Nos. 2015-33 & 2015-89 (November 2015).

In the instant matter, the Complainant submitted his OPRA request on or around April 24, 2018, seeking MVR footage dated March 29, 2016 pertaining to his arrest. The Custodian certified that unless requested by an officer, MVR footage would not be saved and eventually overwritten after thirty (30) days. The Custodian asserted that upon reviewing the related investigative report and speaking with Officer Koehler, no one requested that the MVR footage be saved.

A review of the evidence supports a finding consistent with Perry, GRC 2012-237. The Custodian certified that MVR footage is overwritten after thirty (30) days unless a request to save said footage is timely made. The Complainant submitted his OPRA request on or around April 24, 2018, approximately two (2) years after the date of the requested MVR footage. Furthermore, the Custodian certified that no request to save the MVR footage for that period was made by Lieutenant Deaney or Officer Koehler. While the Complainant contended that he gave an oral confession during the requested period, the Custodian certified that the investigative report did not mention the Complainant making such statements during his transport to KPD headquarters. Moreover, the Complainant did not provide evidence to refute the Custodian's certification.

Therefore, the Custodian borne his burden of proof that he lawfully denied access to the Complainant's April 24, 2018 OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49; Perry, GRC 2012-237.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian borne his burden of proof that he lawfully denied access to the Complainant's April 24, 2018 OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005); Perry v. N.J. Dep't of Corr., GRC Complaint No. 2012-237 (June 2013).

Prepared By: Samuel A. Rosado
Staff Attorney

April 21, 2020