



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**January 7, 2020 Government Records Council Meeting**

William Huysers  
Complainant

Complaint No. 2018-38

v.

NJ Department of Corrections  
Custodian of Record

At the January 7, 2020 public meeting, the Government Records Council (“Council”) considered the December 10, 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:

1. The Custodian has borne his burden of proof that he lawfully denied access to the requested Special Investigative Division special reports because said reports contained investigative and intelligence-gathering methods as well as criminal investigatory records. which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of Southern State Correctional Facility. N.J.S.A. 47:1A-1.1, and N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(2), and N.J.A.C. 10A:22-2.3(b). Cordero v. N.J. Dep’t of Corr., GRC Complaint No. 2012-209 (June 2013); July v. N.J. Dep’t of Corr., GRC Complaint No. 2015-06 (July 2016).
2. The surveillance video responsive to the Complainant’s OPRA request is exempt from disclosure under OPRA pursuant to Department of Corrections regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14). 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. Twp. of Bloomfield, 227 N.J. 159,175-76 (2016); Street v. N. Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 and 2017 (June 2019). Thus, the Custodian lawfully denied access to the request record. N.J.S.A. 47:1A-6.
3. The Custodian has borne his burden of proof that he lawfully denied access to the requested police and lab reports described in the Complainant’s OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49(July 2005).

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 7<sup>th</sup> Day of January 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: January 9, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 7, 2020 Council Meeting**

**William Huysers<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-38**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of Special Investigation Division (“SID”) reports, police records, complaint reports, lab results, and “security camera footage used” of an incident that occurred on April 19, 2017.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** February 1, 2018  
**Response Made by Custodian:** February 1, 2018  
**GRC Complaint Received:** March 12, 2018

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

**Request and Response:**

On January 18, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 1, 2018, the Custodian responded in writing denying the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-1.

**Denial of Access Complaint:**

On March 12, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was being denied access to the above-mentioned records regarding an incident of inmate abuse involving himself.

**Statement of Information:**

On April 3, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on February 1, 2018. The Custodian

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

<sup>2</sup> Represented by Deputy Attorney General Erica R. Heyer.

<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.

certified that he responded in writing on the same day denying the Complainant's OPRA request.

The Custodian asserted that the requested SID reports and surveillance footage were exempt from disclosure under N.J.S.A. 47:1A-1.1. The Custodian further asserted that SID reports are exempt from disclosure under the New Jersey Department of Corrections ("DOC") regulations. N.J.A.C. 10A:22-2.3(a)(2). The Custodian averred that "[t]he documents at issue reveal investigative steps taken to determine what action if any, would be appropriate in response to a complaint and if any wrongdoing had occurred, as well as investigative methods." The Custodian cited Cordero v. N.J. Dep't. of Corr., GRC Complaint No. 2012-209 (June 2013) in support of his denial of SID reports.

The Custodian further argued that both OPRA and relevant case law supports the non-disclosure of security camera footage. See N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016). The Custodian also cited N.J.A.C. 10A:22-2.3(a)(14) exempting surveillance footage of areas within a correctional facility's secured perimeter as confidential under OPRA.

The Custodian finally certified that he denied the Complainant's request for "police records" and "lab results" because the records do not exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

#### Additional Submissions:

On October 10, 2019, the GRC requested additional information from the Custodian. Specifically, the GRC asked the following:

1. Please provide a copy of the Complainant's original OPRA request dated February 1, 2018.

On October 16, 2019, the Custodian responded to the GRC's request for additional information. Therein, the Custodian provided a copy of the Complainant's OPRA request dated January 18, 2018.

### 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.

OPRA further provides that:

A government record shall not include the following information which is deemed to be confidential . . . emergency or security information or procedures for any

buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.

[N.J.S.A. 47:1A-1.1.]

OPRA also provides that:

[OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a)]

#### SID Reports:

In Cordero v. N.J. Dep't of Corr., GRC Complaint No. 2012-209 (June 2013), the complainant sought access to a SID report detailing the use of narcotics canines with prison visitors and subsequent investigations thereafter. The report also contained the identities of civilians and inmates. The Council agreed with the custodian that disclosing the SID report would jeopardize the safety and security of personnel, inmates, and visitors. The Council also held that disclosing reports detailing search and investigation methods could lead to potential exploitation by inmates and undermine established safety and security measures.

Additionally, in July v. N.J. Dep't of Corr., GRC Complaint No. 2015-06 (July 2016) the custodian certified that the information contained in the requested records detailed SID investigation into a gang-related stabbing in prison, subsequent actions taken, and security recommendations. The custodian certified that the reports contained names of other involved inmates, discuss intelligence gathered, sources, interviews conducted, investigative techniques, and Security Threat Group networks within the New Jersey State Prison system. The custodian argued that said reports could not be released because doing so would jeopardize the safe and secure running of the prison system by revealing intelligence gathering capabilities and put other inmates in jeopardy by exposing them to physical abuse, extortion, or some other form of retaliation.

In the instant complaint, the Complainant submitted an OPRA request for SID reports of an alleged incident of inmate abuse. The Custodian denied the Complainant's request because the report contained criminal investigatory records "which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility." N.J.S.A. 47:1A-1. See N.J.A.C. 10A:22-2.3(a)(5) and N.J.A.C. 10A:22-2.3(b). Similar to the SID report sought in Cordero, GRC 2012-209, the responsive record contains investigative and intelligence-gathering methods that could be exploited by inmates if subject to disclosure. The GRC is satisfied that disclosure of the responsive record could pose a significant risk to the safe and secure operation of Southern State Correctional Facility ("SSCF") for the reasons expressed by the Custodian. See

N.J.S.A. 47:1A-1.1. Furthermore, the provisions of OPRA cannot abrogate exemptions made pursuant to promulgated regulations via a state agency. N.J.S.A. 47:1A-9.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested SID special reports because said reports contained investigative and intelligence-gathering methods as well as criminal investigatory records, which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the SSCF. N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(2), and N.J.A.C. 10A:22.2.3(b).

#### Security Camera Footage:

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." Gilleran 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.

The GRC has relied on the Gilleran decision in previous complaints involving the security footage of public buildings. Although decided during the pendency of the instant complaint, Street v. N. Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 and 2017 (June 2019) are instructive here. The complaints involved the disclosure of video camera footage of a lockdown

procedure inside a public school. The custodian's assertions matched those of the instant complaint. The Council discussed the Gilleran Court's application of the security and surveillance exemptions of N.J.S.A. 47:1A-1.1. Therein, the Court ordered non-disclosure of a public building's video surveillance footage, underscoring the imminent harm that would likely result from disclosure.

A sensible application of the security exceptions supports denying release of information that undermines the operation of a government facility's security system. Compelling the wholesale release to the public of videotape product of any security camera, or combination of cameras, from a government facility's security system would reveal information about a system's operation and also its vulnerabilities. Once OPRA is interpreted to require unfettered access to the work product of any camera that is part of a governmental facility's security system, then footage from security cameras in all governmental facilities—police stations, court houses, correctional institutions—would be subject to release on demand. It takes no stretch of the imagination to realize that that would make it possible for any person to gather the information necessary to dismantle the protection provided by such security systems.

Requests for videotape product from surveillance cameras protecting public facilities are better analyzed under the common law right of access where the asserted need for access can be weighed against the needs of governmental confidentiality. (Citations omitted).

[ Gilleran, 227 N.J. at 174-77.]

The Council has ruled previously that requested lockdown camera footage was exempt from disclosure under OPRA's emergency and security exemptions. Street, GRC 2017-103, *et seq.*; N.J.S.A. 47:1A-1.1. Specifically, the Council found that the disclosure of the footage under OPRA would undermine established procedures for lockdown drills that would create a risk to the safety of the persons within the North Arlington District's schools. See also WNBC-TV v. Allendale Bd. of Educ., 2015 N.J. Super. Unpub. LEXIS 1330 (June 4, 2015).

Furthermore, DOC's regulations provide that "the following records shall not be considered government records subject to public access . . . [s]urveillance footage of areas located within a correctional facility's secured perimeter." N.J.A.C. 10A:22-2.3(a)(14).

In the instant matter, the Complainant's OPRA request sought, in part, the surveillance camera footage of the alleged incident occurring on April 19, 2017. The Custodian argued in the SOI that he lawfully denied access to the responsive records under the security and surveillance exemptions contained in OPRA. N.J.S.A. 47:1A-1.1. Relying on Gilleran, the Custodian denied access to camera footage from within SSCF because SSCF is a public building, namely a secured correctional facility. Gilleran, 227 N.J. at 159. Additionally, the Custodian averred that DOC regulations exempted "[s]urveillance footage of areas located within a correctional facility's secured perimeter." N.J.A.C. 10A:22-2.3(a)(14).

The GRC is satisfied that disclosure of the responsive records are exempt for the reasons cited by the Custodian. Disclosure of these records would clearly identify an individual and further reveal techniques of DOC's video surveillance program. The GRC is further satisfied that disclosure of the video surveillance camera footage from within SSCF could be utilized to circumvent the facility's video surveillance program and jeopardize the security of all individuals in the building.

Accordingly, the surveillance video responsive to the Complainant's OPRA request is exempt from disclosure under OPRA pursuant to DOC's regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14). The release of security and surveillance information and techniques creates a risk to the agency which OPRA seeks to avoid in exempting the information and techniques from public access. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. at 175-76; Street, GRC 2017-103, *et seq.* Thus, the Custodian lawfully denied access to the request record. N.J.S.A. 47:1A-6.

#### Police Records and Lab Reports:

The Council has previously found that, in light of a custodian's certification that no records responsive to the request exist, no unlawful denial of access occurred. See Pusterhofer, GRC 2005-49. Here the Custodian certified in the SOI that "[his] office was informed that lab reports and police reports from outside agencies do not exist." Falvey Cert. ¶ 4. Additionally, the Complainant offered no information to refute the Custodian's certification. Thus, there was no unlawful denial of access pursuant to Pusterhofer, GRC 2005-49.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested police and lab reports described in the Complainant's OPRA request. Specifically the Custodian certified in the SOI, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne his burden of proof that he lawfully denied access to the requested Special Investigative Division special reports because said reports contained investigative and intelligence-gathering methods as well as criminal investigatory records. which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of Southern State Correctional Facility. N.J.S.A. 47:1A-1.1, and N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(2), and N.J.A.C. 10A:22-2.3(b). Cordero v. N.J. Dep't of Corr., GRC Complaint No. 2012-209 (June 2013); July v. N.J. Dep't of Corr., GRC Complaint No. 2015-06 (July 2016).
2. The surveillance video responsive to the Complainant's OPRA request is exempt from disclosure under OPRA pursuant to Department of Corrections regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14). 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. Twp. of Bloomfield, 227 N.J. 159,175-76 (2016); Street v. N. Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 and 2017 (June 2019). Thus, the Custodian lawfully denied access to the request record. N.J.S.A. 47:1A-6.

3. The Custodian has borne his burden of proof that he lawfully denied access to the requested police and lab reports described in the Complainant's OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49(July 2005).

Prepared By: Brandon Garcia,  
Case Manager

December 10, 2019