



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**

**November 12, 2019 Government Records Council Meeting**

Tineen Howard  
Complainant

Complaint No. 2018-43

v.

NJ Transit  
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 2019 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 requested TTC 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, 174-177 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Trenton Transit Center and would create a risk to the safety of the persons utilizing the State’s public transportation system. 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 12<sup>th</sup> Day of November 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: November 15, 2019**

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**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 12, 2019 Council Meeting**

**Tineen Howard<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-43**

**v.**

**NJ Transit<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Pick-up of video footage from Trenton Transit Center (“TTC”) on January 24, 2018 between 1:30 and 3:30.

**Custodian of Record:** Rebeca Hernandez  
**Request Received by Custodian:** February 1, 2018  
**Response Made by Custodian:** February 12, 2018  
**GRC Complaint Received:** March 16, 2018

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

**Request and Response:**

On February 1, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 12, 2018, the Custodian responded in writing seeking an extension of time until February 28, 2018 to “adequately respond” to the Complainant’s OPRA request. On February 28, 2018, the Custodian responded in writing denying access to the record responsive to the Complainant’s OPRA. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016).

**Denial of Access Complaint:**

On March 16, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he needed the video footage in order to file charges against a security guard that chased him through TTC. The Complainant provided no additional arguments disputing the Custodian’s denial of access.

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

<sup>2</sup> Represented by Deputy Attorney General Frank J. Marasco.

<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.

### Statement of Information:<sup>4</sup>

On July 23, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 1, 2018. The Custodian affirmed that on February 12, 2018, she responded in writing seeking an extension through February 28, 2018 to respond to the subject OPRA request. The Custodian certified that her search included forwarding the subject OPRA request to the NJ Transit Police Department (“NJTPD”). The Custodian certified that the NJTPD located and returned five (5) surveillance videos responsive to the OPRA request. The Custodian certified that she responded in writing to the Complainant on February 28, 2018 denying access to the videos under N.J.S.A. 47:1A-1.1 and pursuant to Gilleran, 227 N.J. 159.

The Custodian argued that the facts here are on point with those in Gilleran, 227 N.J. 159. The Custodian asserted that there, the New Jersey Supreme Court held that the custodian lawfully denied access to footage from a stationary camera mounted to the second story of a police station. The Custodian asserted that the Court held that the footage was exempt under OPRA and that such a request was better addressed under the common law right of access. Id. at 176-178. The Custodian averred that the Complainant here similarly sought access to video footage from a government entity’s surveillance camera under OPRA. The Custodian thus argued that she lawfully denied access to said footage based on Gilleran, 227 N.J. at 176-178.

The Custodian thus contended that the GRC should dismiss this complaint as frivolous and without any factual basis. N.J.S.A. 47:1A-7(e); N.J.A.C. 5:105-2.1(d). The Custodian also noted that to the extent that the Complainant sought records under the common law; the GRC had no authority to adjudicate such a complaint. Ciesla v. N.J. Dep’t of Health & Senior Serv., 429 N.J. Super. 127, 147-148 (App. Div. 2012).

### 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 exempts disclosure of records that contain “*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 (emphasis added). OPRA further exempts access to “*security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.*” Id. (emphasis added).

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<sup>4</sup> On April 16, 2018, this complaint was referred to mediation. On June 19, 2018, this complaint was referred back to the GRC for adjudication.

In Gilleran, 227 N.J. 159, the Supreme Court held that security footage within a government building is exempt from disclosure under OPRA's security and surveillance exemption at N.J.S.A. 47:1A-1.1. In reaching this conclusion, the Court set forth a detailed explanation of how security footage met the exemption:

Current events since the new millennium make evident the present[-]day difficulties of maintaining daily security for public buildings and people using them. The security exceptions prevent OPRA requests from interfering with such security efforts. Even if the Legislature could not have predicted precisely all the many types of criminal, terroristic events that have happened since OPRA was enacted, the Legislature created flexible exceptions to preserve public safety and security. Now, we know that knowledge of the vulnerabilities of a security system could allow an ill-motivated person to know when and where to plant an explosive device, mount an attack, or learn the movements of persons, placing a public building or persons at risk. Information that reveals the capabilities and vulnerabilities of surveillance cameras that are part of a public facility's security system is precisely the type of information that the exceptions meant to keep confidential in furtherance of public safety.

...

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).

[Id. at 174-177.]

In the instant complaint, the Complainant sought access to video footage of an alleged incident between himself and a TTC security guard, which the Custodian denied under N.J.S.A. 47:1A-1.1 and Gilleran, 227 N.J. 159. In his Denial of Access Complaint, the Complainant argued that he needed the footage to file charges against the security guard. In the SOI, the Custodian identified five (5) videos responsive to the Complainant's OPRA request. However, the Custodian

argued that this complaint was on point with Gilleran: the videos were plainly exempt from disclosure for the reasons discussed by the Supreme Court.

A practical application of Gilleran supports the Custodian's lawful denial of 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 attempts to obtain visual proof of an alleged incident between himself and a security guard for litigation purposes 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 – 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>

Accordingly, the requested TTC 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 174-177. Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the TTC and would create a risk to the safety of the persons utilizing the State's public transportation system. 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 TTC 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, 174-177 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Trenton Transit Center and would create a risk to the safety of the persons utilizing the State's public transportation system. Thus, the Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

October 30, 2019

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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. 47:1A-7(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.