



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

March 26, 2024 Government Records Council Meeting

Joseph Semaan
Complainant

Complaint No. 2019-118

v.

City of Hackensack (Bergen)
Custodian of Record

At the March 26, 2024 public meeting, the Government Records Council (“Council”) considered the March 19, 2024 Supplemental 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 complied with the Council’s January 30, 2024 Interim Order because the Custodian responded within the prescribed time frame, as extended, wherein she certified that all audio and video dash camera footage from police vehicle numbers 104 and 120 were disclosed to the Complainant with segments redacted in compliance with the Council’s Order and simultaneously provided such certified confirmation of compliance to the Executive Director.
2. Although the Custodian denied the Complainant access to the requested dash camera footage that the Council subsequently determined via an *in camera* examination should have been disclosed, the Custodian did disclose the records in compliance with the Council’s January 30, 2024 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 March 2024

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 1, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
March 26, 2024 Council Meeting**

**Joseph Semaan¹
Complainant**

GRC Complaint No. 2019-118

v.

**City of Hackensack (Bergen)²
Custodial Agency**

Records Relevant to Complaint: “I am requesting copies [via e-mail] of . . . dash camera video of the entire field incident that pertains to the information below:

Date of Incident: 6/17/2019

Time: Approximately 8:30 AM

Incident: Suspect refused to comply with school drop off procedure, bit and punched officers

Location: Fairmount Elementary School

Known officers involved: Lt. Tina Cappadonna, Capt. Nicole Foley

Suspect: 40-year-old, Parona Brown, Female”³

Custodian of Record: Deborah Karlsson

Request Received by Custodian: June 19, 2019

Response Made by Custodian: June 27, 2019

GRC Complaint Received: July 1, 2019

Background

January 30, 2024 Council Meeting:

At its January 30, 2024 public meeting, the Government Records Council (“Council”) considered the January 23, 2024 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, found that:

1. The Custodian complied with the Council’s June 29, 2021 Interim Order because she responded in a timely manner providing responsive records for the *in camera* review, as well as a document index and certified confirmation of compliance.

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary Giacobbe Alfieri Jacobs, LLC (Oakland, NJ).

³ There were other records requested that are not relevant to this complaint.

2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in Table A and Table B above within ten (10) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Procedural History:

On February 1, 2024, the Council distributed its January 30, 2024 Interim Order to all parties. On February 8, 2024, the Custodian’s Counsel requested and was granted an extension of time until February 23, 2024 for the Custodian to comply with the Council’s Interim Order.

On February 22, 2024, the Custodian responded to the Council’s Interim Order providing certified confirmation of compliance dated February 21, 2024 to the Executive Director. The Custodian certified that all audio and video dash camera footage from police vehicle numbers 104 and 120 were disclosed to the Complainant with segments redacted in compliance with the Council’s January 30, 2024 Interim Order.

Upon GRC review of the Custodian’s certification of compliance, it was found that the Custodian failed to list the redaction of audio segments 09:28:03 to 09:36:15 from the dash camera footage of police vehicle number 104. By e-mail dated March 12, 2024, the GRC asked the Custodian’s Counsel to have the Custodian prepare a supplemental certification addressing the discrepancy within three (3) business days. On March 14, 2024, the Custodian submitted a supplemental certification wherein she certified that audio segments 09:28:03 to 09:36:15 from the dash camera footage of police vehicle number 104 were indeed redacted; however, she inadvertently failed to list said redaction in her confirmation of compliance dated February 21, 2024.

Analysis

Compliance

At its January 30, 2024 meeting, the Council ordered the Custodian to comply with the Council’s findings of the *in camera* examination set forth in Table A and Table B of the Council’s Interim Order and to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On February 1, 2024, the Council distributed its Interim Order to all parties, providing the Custodian ten (10) business days to comply with the terms of said Order. Thus, the Custodian’s response was due by close of business on February 15, 2024.

On February 8, 2024, the Custodian’s Counsel requested and was granted an extension of time until February 23, 2024 to comply with the Council’s Interim Order. On February 22, 2024, one (1) business day prior to the expiration of the extended time frame for compliance, the

Custodian provided certified confirmation of compliance dated February 21, 2024 to the Executive Director. The Custodian certified that all audio and video dash camera footage from police vehicle numbers 104 and 120 were disclosed to the Complainant with segments redacted as set forth in the Council's January 30, 2024 Interim Order.

Upon reviewing the Custodian's certification of compliance, the GRC found that the Custodian failed to list the redaction of audio segments 09:28:03 to 09:36:15 from the dash camera footage of police vehicle number 104. On March 12, 2024, the GRC asked the Custodian's Counsel to have the Custodian prepare a supplemental certification addressing the discrepancy within three (3) business days. Thus, the Custodian's supplemental certification was due by close of business on March 15, 2024. On March 14, 2024, the Custodian submitted a supplemental certification wherein she certified that audio segments 09:28:03 to 09:36:15 from the dash camera footage of police vehicle number 104 were redacted; however, she inadvertently failed to list said redaction in her confirmation of compliance dated February 21, 2024.

Therefore, the Custodian complied with the Council's January 30, 2024 Interim Order because the Custodian responded within the prescribed time frame, as extended, wherein she certified that all audio and video dash camera footage from police vehicle numbers 104 and 120 were disclosed to the Complainant with segments redacted in compliance with the Council's Order and simultaneously provided such certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states “[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian denied the Complainant access to the requested dash camera footage that the Council subsequently determined via an *in camera* examination should have been

disclosed, the Custodian did disclose the records in compliance with the Council's January 30, 2024 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's January 30, 2024 Interim Order because the Custodian responded within the prescribed time frame, as extended, wherein she certified that all audio and video dash camera footage from police vehicle numbers 104 and 120 were disclosed to the Complainant with segments redacted in compliance with the Council's Order and simultaneously provided such certified confirmation of compliance to the Executive Director.

2. Although the Custodian denied the Complainant access to the requested dash camera footage that the Council subsequently determined via an *in camera* examination should have been disclosed, the Custodian did disclose the records in compliance with the Council's January 30, 2024 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

March 19, 2024



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TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
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JACQUELYN A. SUÁREZ
Acting Commissioner

INTERIM ORDER

January 30, 2024 Government Records Council Meeting

Joseph Semaan
Complainant

Complaint No. 2019-118

v.

City of Hackensack (Bergen)
Custodian of Record

At the January 30, 2024 public meeting, the Government Records Council (“Council”) considered the January 23, 2024 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 complied with the Council’s June 29, 2021 Interim Order because she responded in a timely manner providing responsive records for the *in camera* review, as well as a document index and certified confirmation of compliance.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in Table A and Table B above within ten (10) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with R. 1:4-4,² to the Executive Director.³**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Interim Order Rendered by the
Government Records Council
On The 30th Day of January 2024

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: February 1, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
January 30, 2024 Council Meeting**

**Joseph Semaan¹
Complainant**

GRC Complaint No. 2019-118

v.

**City of Hackensack (Bergen)²
Custodial Agency**

Records Relevant to Complaint: “I am requesting copies [via e-mail] of . . . dash camera video of the entire field incident that pertains to the information below:

Date of Incident: 6/17/2019

Time: Approximately 8:30 AM

Incident: Suspect refused to comply with school drop off procedure, bit and punched officers

Location: Fairmount Elementary School

Known officers involved: Lt. Tina Cappadonna, Capt. Nicole Foley

Suspect: 40-year-old, Parona Brown, Female”³

Custodian of Record: Deborah Karlsson

Request Received by Custodian: June 19, 2019

Response Made by Custodian: June 27, 2019

GRC Complaint Received: July 1, 2019

Records Submitted for *In Camera* Examination: Nine (9) USB flash drives, each containing copies of the requested unredacted records which consist of five (5) Hackensack Police Department dash camera files.

Background

June 29, 2021 Council Meeting:

At its June 29, 2021 public meeting, the Government Records Council (“Council”) considered the June 22, 2021 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, found that:

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary Giacobbe Alfieri Jacobs, LLC (Oakland, NJ).

³ There were other records requested that are not relevant to this complaint.

1. Pursuant to Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, the dash camera video from police vehicle #104 which captured an incident which occurred on June 17, 2019 at approximately 8:30 a.m. at or near the Fairmount Elementary School, to determine the validity of the Custodian's assertion that the record was lawfully denied because it discloses a citizen's personal information, thereby violating the citizen's reasonable expectation of privacy and depicts medical treatment or evaluation, which is exempt from disclosure pursuant to Executive Order 26 (Gov. McGreevey, 2002).
2. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph #1 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On June 30, 2021, the Council distributed its June 29, 2021 Interim Order to all parties. On July 7, 2021, the fourth (4th) business day from receipt of the Council's Order, the Custodian responded by delivering to the Council nine (9) USB flash drives, each containing copies of the requested unredacted records for *in camera* review. The Custodian also delivered certified confirmation of compliance and a document index. The Custodian certified that the records consist of four (4) files containing dash camera footage from Car 104 during the June 17, 2019 incident involving Parona Brown ("incident"), and one (1) file containing dash camera footage from Car 120 during the incident. The Custodian certified that the files from Car 104 contain footage of Ms. Brown during a medical episode and her transport to the hospital. The Custodian further certified that the files from Car 120 contain footage of Ms. Brown during her transportation from the hospital to her home. The Custodian certified that the records were denied pursuant to Executive Order 26 (McGreevey) ("Executive Order 26") and/or to protect Ms. Brown's reasonable expectation of privacy. The Custodian further certified that pursuant to N.J. Court Rule 1:38-7 ("R. 1:38-7"), Ms. Brown's license plate is a confidential personal identifier, and as such, it must be withheld from disclosure. The Custodian stated in the document index that R. 1:38-7 is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a).

Analysis

Compliance

At its June 29, 2021 meeting, the Council ordered the Custodian to deliver to the Council nine (9) unredacted copies of the responsive dash camera files which captured the incident, a document index, and a certified confirmation of compliance. On June 30, 2021, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on July 8, 2021.⁴

Therefore, the Custodian complied with the Council's June 29, 2021 Interim Order because she responded in a timely manner providing responsive records for the *in camera* review, as well as a document index and certified confirmation of compliance.⁵

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. N.J.S.A. 47:1A-6. OPRA further provides that:

The provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; 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; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

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

Records Revealing Medical Treatment or Evaluation

Paragraph 4 of Executive Order No. 26 provides in relevant part that "[t]he following records shall not be considered to be government records subject to public access pursuant to [OPRA] . . . information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation[.]"

⁴ July 5, 2021 was a legal holiday.

⁵ The GRC notes that the records submitted for the *in camera* review were submitted in a timely manner; however, the flash drives containing the records could not be opened by the GRC. After the GRC discussed the issue with the Custodian's Counsel, it was determined that the records could be sent via a Dropbox, Inc. link. The records were successfully sent via a Dropbox, Inc. link on August 2, 2021.

In Rivera v. Town of W. New York (Hudson), GRC Complaint No. 2010-208 (Interim Order January 29, 2013), a requested police report was denied because the custodian asserted that since it describes an emergency medical incident which ultimately resulted in emergency medical services transporting a patient it was exempt from access pursuant to Executive Order No. 26. Following an *in camera* examination, the Council found that the record was lawfully denied pursuant to Executive Order No. 26 because the record contained a description of a medical emergency. Subsequently, in Little V. N.J. Dep't of Corr., GRC Complaint No. 2012-70 (April 2013), the complainant requested his own medical records, including psychiatric and psychological reports. Although the custodian suggested that there may be other means by which the complainant could obtain the records, she stated that under OPRA disclosure of such records was prohibited pursuant to Executive Order No. 26.

Here, the GRC has determined that numerous audio segments of the records tend to reveal information relating to medical treatment or evaluation. As the Custodian certified in the Statement of Information “[Ms. Brown] . . . was extremely emotionally distraught, and she was blatantly in the midst of a medical episode for the duration of the incident.” The audio contains not only Ms. Brown’s comments, but also statements from and to the police and hospital/medical personnel. Although the audio is often garbled because several people are talking at the time the recording was made, the audio could potentially be enhanced to allow Ms. Brown’s and/or medical providers’ statements to be understandable. As such, these records were found to be exempt from access.

Safeguarding a Citizen’s Reasonable Expectation of Privacy

OPRA further provides that “a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy[.]” N.J.S.A. 47:1A-1.

Here, the Custodian denied the Complainant access to the requested records in part because disclosure thereof would violate Ms. Brown’s reasonable expectation of privacy by revealing her vehicle license plate number.

The Custodian argued in the certification of compliance that R. 1:38-7, applicable to OPRA via N.J.S.A. 47:1A-9(a), exempts access to vehicle license plates. The GRC is not convinced the Custodian’s argument is valid. R. 1:38-7 prohibits the submission of a “confidential personal identifier” *to the court*. The court rule defines a confidential personal identifier as a social security number, driver’s license number, vehicle plate number, insurance policy number, active financial account number, and active credit card number. Here, license plate numbers are not being submitted to the court, but rather, are contained within dash camera footage requested under OPRA.

However, the Council has previously held that license plates are not subject to disclosure under OPRA’s privacy exemption. In Nelson v. N.J. Dep’t of Law & Pub. Safety, GRC Complaint No. 2013-124 (Interim Order April 29, 2014), the complainant requested certain police vehicle mobile video recordings. The custodian disclosed the requested records with

segments redacted. After a Denial of Access Complaint was filed by the complainant, the Council conducted an *in camera* examination of the records. The Council concluded that the custodian lawfully denied access to segments of the requested records. In pertinent part, the Council determined that information related to the “make, model, color, and license plate numbers” of vehicles operated by persons that were not a party to the complaint, if disclosed, would violate the citizens’ reasonable expectations of privacy pursuant to N.J.S.A. 47:1A-1.

Here, as in Nelson, GRC 2013-124, the police dash cameras captured images of license plates on vehicles operated by persons that were not a party to the complaint. Therefore, in accord with the Council’s decision in Nelson, all such visible license plates must be redacted.⁶

Records That Reveal Police Scheduling

The Council is permitted to affirm a denial of access for reasons not raised by a custodian pursuant to Paff v. Twp. of Plainsboro, Docket No. A-2122-05T2 (App. Div. 2007), *certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007).⁷ In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian’s cited basis for denial was lawful. The court held that:

[t]he GRC has an independent obligation to ‘render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian’s initial determination; it is charged with determining if the initial decision was correct.

[Id.]

In Goodwin v. Borough of Woodlynne (Camden), GRC Complaint No. 2020-175 (April 2022), the complainant requested copies of police patrol schedules. The Council, citing Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (Interim Order May 24, 2011), concluded that the requested records were exempt from access under N.J.S.A. 47:1A-1.1, as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property.

Here, a segment of the requested audio footage captures a conversation wherein police scheduling and staffing were discussed. Thus, as in Goodwin, GRC 2020-175, the audio segment containing the discussion is also exempt from access as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property pursuant to N.J.S.A. 47:1A-1.1.

⁶ The GRC notes that Ms. Brown’s home address is not at issue because although the police transported Ms. Brown “home,” the transport was to a multi-story apartment complex. Ms. Brown adamantly refused to disclose her specific apartment number.

⁷ On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006). [unpublished]

Results of the *In Camera* Examination

An *in camera* examination was performed on the submitted records. The results of this examination are set forth in the following two (2) tables:

TABLE A – DASH CAMERA FOOTAGE FROM CAR 104

Custodian’s Description of Record	Custodian’s Explanation/ Citation for Non-disclosure	Findings of the <i>In Camera</i> Examination for Audio⁸	Findings of the <i>In Camera</i> Examination for Video (see footnote 8)
<p>“Dash cam footage which captured a citizen being transported via ambulance to/from a local hospital and the events surrounding same.”</p>	<p>The requested record was denied in its entirety because the Custodian asserted it discloses a citizen’s personal information, thereby violating the citizen’s reasonable expectation of privacy pursuant to <u>N.J.S.A. 47:1A-1</u>, and depicts medical treatment or evaluation, which is exempt from disclosure pursuant to Executive Order 26.</p>	<p>The following segments of the footage shall be redacted as “relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation” proscribed by Executive Order No. 26 and applicable to OPRA via operation of <u>N.J.S.A. 47:1A-9(a)</u>:</p> <p>08:40:16 to 09:10:07 09:12:04 to 09:13:15 09:14:48 to 09:15:02 09:15:10 to 09:15:15 09:18:08 to 09:19:20 09:20:41 to 09:25:52 09:36:16 to 09:41:13 09:44:55 to 09:46:14 09:47:23 to 10:00:02 10:10:07 to 10:10:28</p> <p>The following segments of the footage shall be redacted</p>	<p>Redact images of all visible license plates except those of police and emergency vehicles for such images appearing in the following segments because disclosure thereof would violate the citizen’s reasonable expectation of privacy pursuant to <u>N.J.S.A. 47:1A-1</u>; <u>Nelson</u>, GRC 2013-124:</p> <p>08:37:54 to 08:58:16 10:01:00 to 10:15:10</p>

⁸ **Unless expressly identified for redaction, all responsive records shall be disclosed.** Redactions of audio may be accomplished by muting the identified segments; redactions of video may be accomplished by blurring the identified images such that facial characteristics are unrecognizable and writings are unintelligible. For purposes of identifying redactions, the “media current time” is used in a bracketing format. If there is any question as to the location and/or extent of a redaction, the GRC should be contacted for clarification before the record is redacted.

		<p>because they constitute records that reveal police scheduling and are exempt from access under <u>N.J.S.A.</u> 47:1A-1.1, as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property:</p> <p>09:28:03 to 09:36:15</p>	
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TABLE B – DASH CAMERA FOOTAGE FROM CAR 120

Custodian’s Description of Record	Custodian’s Explanation/ Citation for Non-disclosure	Findings of the <i>In Camera</i> Examination for Audio (see footnote 8)	Findings of the <i>In Camera</i> Examination for Video (see footnote 8)
<p>“Dash cam footage which captured a citizen being transported via ambulance to/from a local hospital and the events surrounding same.”</p>	<p>The requested record was denied in its entirety because the Custodian asserted it discloses a citizen’s personal information, thereby violating the citizen’s reasonable expectation of privacy pursuant to <u>N.J.S.A.</u> 47:1A-1, and depicts medical treatment or evaluation, which is exempt from disclosure pursuant to Executive Order 26 (McGreevey).</p>	<p>The following segments of the footage shall be redacted for dash camera and rear camera as “relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation” proscribed by Executive Order No. 26:</p> <p>09:55:52 to 10:00:02 10:04:54 to 10:05:48 10:10:07 to 10:10:28</p>	<p>Redact images of all visible license plates except those of police and emergency vehicles for such images appearing in the following segments because disclosure thereof would violate the citizen’s reasonable expectation of privacy pursuant to <u>N.J.S.A.</u> 47:1A-1; <u>Nelson</u>, GRC 2013-124:</p> <p>09:55:19 to 10:07:32</p>

On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's findings of the *in camera* examination set forth in Table A and Table B above.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's June 29, 2021 Interim Order because she responded in a timely manner providing responsive records for the *in camera* review, as well as a document index and certified confirmation of compliance.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in Table A and Table B above within ten (10) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver⁹ certified confirmation of compliance, in accordance with R. 1:4-4,¹⁰ to the Executive Director.¹¹**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart

January 23, 2024

⁹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

¹⁰ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹¹ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



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

INTERIM ORDER

June 29, 2021 Government Records Council Meeting

Joseph Semaan
Complainant

Complaint No. 2019-118

v.

City of Hackensack (Bergen)
Custodian of Record

At the June 29, 2021 public meeting, the Government Records Council (“Council”) considered the June 22, 2021 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. Pursuant to Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, the dash camera video from police vehicle #104 which captured an incident which occurred on June 17, 2019 at approximately 8:30 a.m. at or near the Fairmount Elementary School, to determine the validity of the Custodian’s assertion that the record was lawfully denied because it discloses a citizen’s personal information, thereby violating the citizen’s reasonable expectation of privacy and depicts medical treatment or evaluation, which is exempt from disclosure pursuant to Executive Order 26 (Gov. McGreevey, 2002).
2. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph #1 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,³ that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

³ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Interim Order Rendered by the
Government Records Council
On The 29th Day of June 2021

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: June 30, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 29, 2020 Council Meeting**

Joseph Semaan¹
Complainant

GRC Complaint No. 2019-118

v.

City of Hackensack (Bergen)²
Custodial Agency

Records Relevant to Complaint: “I am requesting copies [via e-mail] of . . . dash camera video of the entire field incident that pertains to the information below:

Date of Incident: 6/17/2019

Time: Approximately 8:30 AM

Incident: Suspect refused to comply with school drop off procedure, bit and punched officers

Location: Fairmount Elementary School

Known officers involved: Lt. Tina Cappadonna, Capt. Nicole Foley

Suspect: 40-year-old, Parona Brown, Female”³

Custodian of Record: Deborah Karlsson

Request Received by Custodian: June 19, 2019

Response Made by Custodian: June 27, 2019

GRC Complaint Received: July 1, 2019

Background⁴

Request and Response:

On June 19, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 27, 2019, the sixth (6th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the Hackensack Police Department has dash camera video of the incident but it cannot be disclosed pursuant to Executive Order 26 (Gov. McGreevey, 2002)(“EO 26”) because information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation is not subject to disclosure. The Custodian also denied the Complainant access to the

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary Giacobbe Alfieri Jacobs, LLC (Oakland, NJ).

³ There were other records requested that are not relevant to 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.

records because she stated that OPRA requires that a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. The Custodian stated that the video captures Ms. Brown in an extremely fragile state and disclosure of the video would violate her reasonable expectation of privacy.

Denial of Access Complaint:

On July 1, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the City claimed the requested video clearly constitutes information relating to medical treatment or evaluation. The Complainant stated that although he requested the "entire field incident," he did not want video of medical treatment or evaluation, which he stated could be redacted. The Complainant stated that denial based upon the Custodian's opinion that a recording of Ms. Brown's "extremely fragile state" is not a lawful denial under OPRA because N.J.S.A. 47:1A-1 provides that the agency has an obligation to not disclose a citizen's "personal information" with which the agency has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. The Complainant stated that he did not request Ms. Brown's personal information; therefore, the privacy provision under N.J.S.A. 47:1A-1 is not a valid reason for denial of the requested records.

Statement of Information:

On July 22, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on June 19, 2019, and responded in writing on June 27, 2019.

The Custodian certified that the dash camera on police vehicle #104 recorded a citizen being transported via ambulance to a local hospital and the events surrounding the incident. The Custodian certified that prior to the video footage that was captured by the police dash camera, the citizen, who was "conspicuously pregnant," attacked two Hackensack police officers. The Custodian certified that the citizen was "extremely emotionally distraught, and she was blatantly in the midst of a medical episode for the duration of the incident captured on video. As such, release of the video would undoubtedly violate the citizen's 'reasonable expectation of privacy.'"

The Custodian also certified that the requested record was denied pursuant to Executive Order 26 (McGreevey), which provides "[t]he following records shall not be considered to be government records subject to public access pursuant to [OPRA] . . . Information concerning individuals as follows . . . Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation[.]" The Custodian also cited Rivera v. v. Town of West New York, GRC Complaint No. 2010-208 in support of her argument for denial of access to the requested record.

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.

Here, the Custodian denied the Complainant access to the requested record because the Custodian certified that pursuant to EO 26, information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation is not subject to disclosure. The Custodian also certified that disclosure of the record would violate the citizen’s reasonable expectation of privacy. The Complainant disputed the Custodian’s reasons for denying him access to the requested record. The Complainant stated that the Custodian could redact any footage that depicted medical treatment or evaluation. The Complainant also stated that N.J.S.A. 47:1A-1 provides that the agency has an obligation to not disclose a citizen’s personal information with which the agency has been entrusted when disclosure would violate the citizen’s reasonable expectation of privacy. The Complainant stated that he did not request Ms. Brown’s personal information; therefore, he was unlawfully denied access to the requested record.

In Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council⁵ dismissing the complaint by accepting the custodian’s legal conclusion for the denial of access without further review. The Court stated that “OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.” Id. The Court also stated that:

The statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the Court stated that:

⁵ Paff v. NJ Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

Therefore, pursuant to Paff, 379 N.J. Super. at 346, the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, the dash camera video from police vehicle #104 which captured an incident which occurred on June 17, 2019 at approximately 8:30 a.m. at or near the Fairmount Elementary School, to determine the validity of the Custodian's assertion that the record was lawfully denied because it discloses a citizen's personal information, thereby violating the citizen's reasonable expectation of privacy and depicts medical treatment or evaluation, which is exempt from disclosure pursuant to EO 26.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Pursuant to Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, the dash camera video from police vehicle #104 which captured an incident which occurred on June 17, 2019 at approximately 8:30 a.m. at or near the Fairmount Elementary School, to determine the validity of the Custodian's assertion that the record was lawfully denied because it discloses a citizen's personal information, thereby violating the citizen's reasonable expectation of privacy and depicts medical treatment or evaluation, which is exempt from disclosure pursuant to Executive Order 26 (Gov. McGreevey, 2002).
2. **The Custodian must deliver⁶ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph #1 above), a document or redaction index⁷, as well as a legal certification from the Custodian, in**

⁶ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

⁷ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

accordance with N.J. Court Rule 1:4-4,⁸ that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart
Staff Attorney

June 22, 2021

⁸ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."