



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 26, 2021 Government Records Council Meeting**

Dwayne Wakefield  
Complainant

Complaint No. 2019-141

v.

Township of Middle (Cape May)  
Custodian of Record

At the January 26, 2021 public meeting, the Government Records Council (“Council”) considered the January 19, 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. The Custodian lawfully denied access to the Complainant’s February 5, 2019 and March 11, 2019 OPRA requests seeking guidelines, procedures, or laws on registering confidential informants and how funds are used to conduct controlled purchases. N.J.S.A. 47:1A-6. Such records are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a), Executive Order No. 26 (Gov. McGreevey, 2002), and N.J.A.C. 13:1E-3.2(a)(2).
2. The Custodian did not unlawfully deny access to the Complainant’s June 25, 2019 OPRA request seeking records pertaining to an internal affairs investigation, as such records are exempt under the Internal Affairs Policy & Procedures. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009); Blaustein v. Lakewood Police Dep’t (Ocean), GRC Complaint No. 2011-102 (June 2012); Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010); Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015).

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 26<sup>th</sup> Day of January 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: January 28, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 26, 2021 Council Meeting**

**Dwayne Wakefield<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-141**

v.

**Township of Middle (Cape May)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

February 5, 2019 OPRA Request: Hard copy of Middle Township Police Department's ("MTPD") procedures on the usage and filing of a confidential informant.

March 11, 2019 OPRA Request: Hard copies of:

1. The laws or guidelines MTPD uses to file or register a confidential informant.
2. The laws or guidelines MTPD uses to receive state or county funds to conduct a controlled buy.

June 25, 2019 OPRA Request: Hard copy of Internal Affairs investigation report #2018-10.

**Custodian of Record:** Emily Bowman

**Request Received by Custodian:** February 5, 2019; March 11, 2019; June 25, 2019

**Response Made by Custodian:** February 5, 2019; March 20, 2019; June 26, 2019

**GRC Complaint Received:** July 15, 2019

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

February 5, 2019 OPRA Request and Response:

On January 29, 2019, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On February 5, 2019, the Custodian responded in writing stating that the requested records were exempt from disclosure under OPRA's exemptions for criminal investigatory records and security measures and surveillance techniques. N.J.S.A. 47:1A-1.1.

---

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

<sup>2</sup> Represented by Deputy Attorney Steven A. Morris, Esq., of Blaney & Karavan, P.C. (Wildwood, NJ).

<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.

Dwayne Wakefield v. Township of Middle (Cape May), 2019-141 – Findings and Recommendations of the Executive Director

### March 11, 2019 OPRA Request and Response:

On February 26, 2019, the Complainant submitted an OPRA request seeking the above-mentioned records. On March 20, 2019, the Custodian responded in writing stating that that the requested records were exempt from disclosure under OPRA's exemptions for criminal investigatory records and security measures and surveillance techniques.

### June 25, 2019 OPRA Request and Response:

On June 7, 2019, the Complainant submitted an OPRA request seeking the above-mentioned records. On June 26, 2019, the Custodian responded in writing stating that the requested record was exempt pursuant to Paff v. Bergen Cnty., 2017 N.J. Super. Unpub. LEXIS 627 (App. Div. Mar. 13, 2017).

### Denial of Access Complaint:

On July 15, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he submitted the requests via letter and was denied access to same by the Custodian.

### Statement of Information:

On August 21, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA requests on February 5, 2019, March 11, 2019, and June 25, 2019. The Custodian certified that her search included forwarding the requests to MTPD. The Custodian certified that she was subsequently told by the Chief of MTPD that the requested records were not subject to OPRA and could not be disclosed. The Custodian certified that she responded in writing on February 5, 2019, March 20, 2019, and June 26, 2019 respectively.

The Custodian argued that records sought the February 5, 2019, and March 11, 2019 OPRA request were exempt from disclosure pursuant to Department of Law and Public Safety ("DPS") regulations N.J.A.C. 13:1E-3.2(a)(2). The Custodian also argued that the Complainant's request for an internal affairs investigation report was properly denied under N.J.S.A. 47:1A-10.

## 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.

## February 5, 2019 and March 11, 2019 OPRA Requests

OPRA provides that its provisions “. . . 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).

To this end, DPS regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.

(2) Records, including standard operating procedures, manuals, and training materials, that may reveal: the identity of a confidential informant, a confidential source, a citizen informant, or undercover personnel; or an agency's surveillance, security, tactical, investigative, or operational techniques, measures, or procedures, which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software, or compromise an agency's ability to effectively conduct investigations.

[N.J.A.C. 13:1E-3.2(a)(2).]

Additionally, Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”) provides that:

The following records shall not be considered to be government records subject to public access pursuant to [OPRA] . . . [r]ecords of a department or agency in the possession of another department or agency when those records are made confidential by a regulation of that department or agency adopted pursuant to [OPRA] and Executive Order No. 9 (Gov. Hughes, 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.

In Cattonar v. Twp. of Jackson Police Dep't (Ocean), GRC Complaint No. 2011-230 (November 2012), the custodian denied access to the requested records based upon a regulation promulgated for use by a State agency. The Council found that the custodian lawfully denied access based upon EO 26, holding that the exemption for the state agency would be abrogated if the local agency were required to disclose the responsive records. See Cattonar v. Twp. of Jackson Police Dep't (Ocean), 2014 N.J. Super. Unpub. LEXIS 2130 (App. Div. Aug. 29, 2014) certify denied 220 N.J. 268 (2015)).

In the instant matter, the Complainant requested procedures, laws, or guidelines pertaining to the registration and filing confidential informants and how police departments use funds for controlled purchases. The Custodian initially denied access under OPRA's criminal investigatory exemption and security and surveillance techniques. See N.J.S.A. 47:1A-1.1. The Custodian subsequently argued in the SOI that the records were exempt pursuant to N.J.A.C. 13:1E-3.2(a)(2).

The facts in this matter parallel those in Cattonar, GRC 2011-230, with MTPD, a local agency, relying upon regulations promulgated by DPS, a State agency. Since EO 26 allows for an agency to rely on another's regulation exempting access to records, the Custodian's reliance on N.J.A.C. 13:1E-3.2(a)(2) was lawful. The Complainant's requests explicitly seek guidelines on how MTPD registers confidential informants, as well as the guidelines on conducting controlled purchases. Access to the procedures and guidelines could lead to the discovery of confidential informants as well as circumvent MTPD's ability to conduct investigations.

Therefore, the Custodian lawfully denied access to the Complainant's February 5, 2019 and March 11, 2019 OPRA requests seeking guidelines, procedures, or laws on registering confidential informants and how funds are used to conduct controlled purchases. N.J.S.A. 47:1A-6. Such records are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a), EO 26, and N.J.A.C. 13:1E-3.2(a)(2).

#### June 25, 2019 OPRA Request

OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581 (2011). In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), the Council held that:

The Complainant's request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent [part] that “the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a public record and shall not be made available for public access” [emphasis omitted]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

[Id.]

Further, the personnel records exemption may apply to records that “. . . bear many of the indicia of personnel files.” North Jersey Media Grp. v. Bergen Cnty. Prosecutor's Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014). In Rodriguez, the Council held that “disciplinary actions are not specifically identified as personnel information subject to disclosure under OPRA.” Id. at 5.

Additionally, the Council has previously held that the IAPP and other Attorney General Guidelines carry the force of law.<sup>4</sup> See Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012) (citing O'Shea v. Twp. of West Milford, 410 N.J. Super.

---

<sup>4</sup> The IAPP was promulgated via the Division of Criminal Justice in the New Jersey Department of Law and Public Safety. All GRC references to the IAPP are to the August 2020 revision of the document.  
Dwayne Wakefield v. Township of Middle (Cape May), 2019-141 – Findings and Recommendations of the Executive Director

371, 484-85 (App. Div. 2009)). Thus, because the Appellate Division determined that Attorney General Guidelines have the force of law for police entities, the IAPP operates to exempt the requested records from disclosure, providing in part: “[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information.”<sup>5</sup> See also Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010) (accepting an Initial Decision of the Office of Administrative Law that internal affairs reports are confidential records); Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015) (holding that the custodian lawfully denied access to internal affairs investigation records).

In the instant matter, the Complainant sought an internal investigation report identified as #2018-10. The Custodian initially denied access pursuant to Paff, slip op., but subsequently argued in the SOI that the record was exempt as a personnel record under N.J.S.A. 47:1A-10. Notwithstanding, internal investigation records are explicitly exempt pursuant to the IAPP and prevailing caselaw.

Therefore, the Custodian did not unlawfully deny access to the Complainant’s June 25, 2019 OPRA request seeking records pertaining to an internal affairs investigation, as such records are exempt under the IAPP. See O’Shea, 410 N.J. Super. 371; Blaustein, GRC 2011-102; Rivera, GRC 2007-222; Camarata, GRC 2014-127.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the Complainant’s February 5, 2019 and March 11, 2019 OPRA requests seeking guidelines, procedures, or laws on registering confidential informants and how funds are used to conduct controlled purchases. N.J.S.A. 47:1A-6. Such records are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a), Executive Order No. 26 (Gov. McGreevey, 2002), and N.J.A.C. 13:1E-3.2(a)(2).
2. The Custodian did not unlawfully deny access to the Complainant’s June 25, 2019 OPRA request seeking records pertaining to an internal affairs investigation, as such records are exempt under the Internal Affairs Policy & Procedures. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009); Blaustein v. Lakewood Police Dep’t (Ocean), GRC Complaint No. 2011-102 (June 2012); Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010); Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015).

Prepared By: Samuel A. Rosado  
Staff Attorney

January 19, 2021

---

<sup>5</sup> IAPP, Internal Affairs Records, pg. 56.