



State of New Jersey
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 26, 2021 Government Records Council Meeting

Quincy Latney
Complainant

Complaint No. 2019-237

v.

Elizabeth Police Department (Union)
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 the Custodian lawfully denied access to the Complainant’s OPRA because such records are exempt from disclosure under the Internal Affairs Policy & Procedures. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; 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 26th 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

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Quincy Latney¹
Complainant**

GRC Complaint No. 2019-237

v.

**Elizabeth Police Department (Union)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of “any and all information of complaints and investigations pertaining to” four (4) Elizabeth Police Department (“EPD”) officers.

Custodian of Record: Yolanda Roberts
Request Received by Custodian: November 7, 2019
Response Made by Custodian: November 7, 2019
GRC Complaint Received: November 25, 2019

Background³

Request and Response:

On November 4, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 7, 2019, the same business day as receipt of the OPRA request, the Custodian responded in writing denying the Complainant’s OPRA request under the Internal Affairs Policy & Procedures (“IAPP”). N.J.S.A. 47:1A-9; N.J.S.A. 40A:14-181.

Denial of Access Complaint:

On November 25, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed that the requested records were confidential.

¹ No legal representation listed on record.

² Represented by Samantha Castrelos, Esq. (Elizabeth, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Statement of Information:

On December 27, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 7, 2019. The Custodian certified that her search included discussing the request with Counsel and the Internal Affairs (“IA”) Officer. The Custodian certified that she responded in writing on the same day denying access to five (5) reports for one officer, two (2) for the second officer, twenty-eight (28) for the third officer, and no reports for the fourth officer.

The Custodian asserted that the IAPP mandates that IA reports are confidential records with limited exceptions, including for good cause. See IAPP at 42. The Custodian stated that municipalities are required to adopt and implement policies consistent with the IAPP pursuant to N.J.S.A. 40A:14-181. The Custodian noted that the City of Elizabeth (“City”) has complied by putting such policies in place.

The Custodian argued that she lawfully denied access to the responsive IA case files, which included IA report forms, investigation reports, disposition sheets, recordings of interviews, police reports, court documents, notes, and other evidence where applicable. The Custodian argued that said records were exempt under the IAPP and the Complainant failed to indicate whether he fell within the limited exceptions or that he had good cause requiring disclosure.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Council has previously held that the IAPP and other Attorney General Guidelines carry the force of law.⁴ 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. 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.”⁵ 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).

⁴ 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.

⁵ IAPP, Internal Affairs Records, pg. 56.

In the instant matter, the Complainant's OPRA request sought "any and all information of complaints and investigations pertaining to" four (4) EPD officers.⁶ The Custodian denied access, and subsequently argued in the SOI that thirty-five (35) responsive IA files containing multiple investigative records were exempt under OPRA and the IAPP. The Custodian noted that the City adopted IAPP policies as required by N.J.S.A. 40A:14-181; thus, the IAPP applied to the records sought. The Custodian further argued that the Complainant failed to fall within the limited exceptions presented under the IAPP.

Based on the forgoing, the GRC is persuaded that the Custodian lawfully denied access to the responsive IA files. This is because the records responsive to the subject OPRA request are IA records. Further, all prevailing case law discussed above supports the Custodian's denial here. Thus, no violation of OPRA has occurred here.

Therefore, the Custodian lawfully denied access to the Complainant's OPRA because such records are exempt from disclosure under the IAPP. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; 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 the Custodian lawfully denied access to the Complainant's OPRA because such records are exempt from disclosure under the Internal Affairs Policy & Procedures. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; 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: Frank F. Caruso
Executive Director

January 19, 2021

⁶ The GRC notes that the Complainant's OPRA request is invalid on its face because it fails to identify any specific records sought. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).