



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

September 29, 2020 Government Records Council Meeting

Doreen Frega
Complainant

Complaint No. 2019-71

v.

Township of Lacey (Ocean)
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“Council”) considered the September 22, 2020 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 the Complainant has failed to establish in her request for reconsideration of the Council’s August 25, 2020 Final Decision that either 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on a change in circumstances. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to demonstrate that the disclosure protections afforded to law enforcement records pertaining to a juvenile are no longer applicable once a juvenile reaches adulthood. Thus, the Complainant’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 29th Day of September 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: October 1, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
September 29, 2020 Council Meeting

Doreen Frega¹
Complainant

GRC Complaint No. 2019-71

v.

Township of Lacey (Ocean)²
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. All complaints regarding the raccoon beaten to death in Lacey Township (“Township”) between December 2018 through February 2019.
2. All tickets issued in connection with the trapping of the raccoon between December 2018 through February 2019.

Custodian of Record: Veronica Laureigh
Request Received by Custodian: March 11, 2019
Response Made by Custodian: March 11, 2019
GRC Complaint Received: April 1, 2019

Background

August 25, 2020 Council Meeting:

At its August 25, 2020 public meeting, the Council considered the August 18, 2020 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:

[T]he evidence of record demonstrates that the Custodian lawfully denied access to the Complainant’s March 11, 2019 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant is restricted from access to the responsive record pursuant to N.J.S.A. 2A:4A-60(a), since the Custodian certified that the matter involves juvenile suspects and OPRA does not abrogate exemptions on public access to records pursuant to other statutes. See N.J.S.A. 47:1A-9(a), Gabardi v. Voorhees

¹ No legal representation listed on record.

² Represented by Lauren Staiger, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.A. (Lakewood, N.J.).

³ The Complainant included previously submitted OPRA requests seeking similar records pertaining to the same incident; however, the Complainant only referenced the instant request in her Denial of Access Complaint.

Twp. Police Dep't (Camden), GRC Complaint No. 2008-259 (December 2009); Paine v. Barrington Police Dep't (Camden), GRC Complaint No. 2016-197 (January 2018). Furthermore, since the record is exempt pursuant to N.J.S.A. 2A:4A-60(a), the Council need not address whether same is exempt as criminal investigatory records under N.J.S.A. 47:1A-1.1.

Procedural History:

On August 26, 2020, the Council distributed its Final Decision to all parties. On September 2, 2020, the Complainant filed a request for reconsideration of the Council's August 25, 2020 Final Decision based on a change in circumstances. The Complainant asserted that at the time she filed her OPRA request, the individuals implicated in the incident were juveniles. The Complainant asserted that those individuals have since become adults, and therefore should be retried as adults and their records released.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order dated August 25, 2020 on September 2, 2020, five (5) days from the issuance of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain

A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

The Complainant asserted that the individuals charged in connection to the incident have since reached adulthood and thus records generated while they were juveniles should be released. However, the Custodian certified in her July 30, 2020 response to the GRC's request for additional information that as of July 29, 2020, the individuals in question remained juveniles.

Notwithstanding, the Complainant does not demonstrate that the protections afforded to juvenile records under N.J.S.A. 2A:4A-60 are nullified once a juvenile reaches adulthood. Rather, the language of the statute is clear that "records of law enforcement agencies, pertaining to juveniles charged as a delinquent . . . shall be strictly safeguarded from public inspection," with no exception for when a juvenile in question reaches adulthood. N.J.S.A. 2A:4A-60(a). See also In re Release of Juveniles' Identities to Wise, 204 N.J. Super. 71, 72 (Super. Ct. 1985) ("The obvious intent of the Legislature is that disclosure of juvenile records is to be the exception, not the rule. N.J.S.A. 2A:4A-60(a), (f). Disclosure is clearly proscribed until the requirements of the enumerated exceptions of N.J.S.A. 2A:4A-60(a) to (c) are met."). Thus, regardless of whether the individuals have since reached adulthood, the requested records are not disclosable pursuant to N.J.S.A. 2A:4A-60(a) to (j).

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. The Complainant failed to establish that the complaint should be reconsidered based on a change in circumstances. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria, 242 N.J. Super. at 401. Specifically, the Complainant failed to demonstrate that the disclosure protections afforded to law enforcement records pertaining to a juvenile are no longer applicable once a juvenile reaches adulthood. Thus, the Complainant's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in her request for reconsideration of the Council's August 25, 2020 Final Decision that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on a change in circumstances. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to demonstrate that the disclosure protections afforded to law enforcement records pertaining to a juvenile are no longer applicable once a juvenile reaches adulthood. Thus, the Complainant's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To

Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Samuel A. Rosado
Staff Attorney

September 22, 2020



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

August 25, 2020 Government Records Council Meeting

Doreen Frega
Complainant

Complaint No. 2019-71

v.

Township of Lacey (Ocean)
Custodian of Record

At the August 25, 2020 public meeting, the Government Records Council (“Council”) considered the August 18, 2020 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 evidence of record demonstrates that the Custodian lawfully denied access to the Complainant’s March 11, 2019 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant is restricted from access to the responsive record pursuant to N.J.S.A. 2A:4A-60(a), since the Custodian certified that the matter involves juvenile suspects and OPRA does not abrogate exemptions on public access to records pursuant to other statutes. See N.J.S.A. 47:1A-9(a), Gabardi v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2008-259 (December 2009); Paine v. Barrington Police Dep’t (Camden), GRC Complaint No. 2016-197 (January 2018). Furthermore, since the record is exempt pursuant to N.J.S.A. 2A:4A-60(a), the Council need not address whether same is exempt as criminal investigatory records under N.J.S.A. 47:1A-1.1.

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 25th Day of August 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: August 27, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 25, 2020 Council Meeting**

**Doreen Frega¹
Complainant**

GRC Complaint No. 2019-71

v.

**Township of Lacey (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. All complaints regarding the raccoon beaten to death in Lacey Township (“Township”) between December 2018 through February 2019.
2. All tickets issued in connection with the trapping of the raccoon between December 2018 through February 2019.

Custodian of Record: Veronica Laureigh
Request Received by Custodian: March 11, 2019
Response Made by Custodian: March 11, 2019
GRC Complaint Received: April 1, 2019

Background⁴

Request and Response:

On March 8, 2019, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On March 11, 2019, the Custodian responded in writing, forwarding a letter from Lynn Talarico of the Lacey Township Police Department (“LPD”). Therein, Ms. Talarico stated that a “police incident report”⁵ responsive to the request was exempt from access under OPRA as it was a criminal investigatory record. N.J.S.A. 47:1A-1.1. Ms. Talarico also referenced N.J.S.A. 2A:4A-60, which prohibited from public inspection records of law enforcement agencies pertaining to juveniles charged with delinquency.

¹ No legal representation listed on record.

² Represented by Lauren Staiger, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.A. (Lakewood, N.J.).

³ The Complainant included previously submitted OPRA requests seeking similar records pertaining to the same incident; however, the Complainant only referenced the instant request in her Denial of Access 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.

⁵ The Custodian sent Ms. Talarico’s letter to the Complainant in response to two (2) prior OPRA requests seeking reports regarding the raccoon incident.

Denial of Access Complaint:

On April 1, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the incident at issue was a third (3rd) degree felony and the prosecutor failed in his duties. The Complainant argued that the records should be released.

Statement of Information:

On April 29, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 11, 2019. The Custodian certified that she responded in writing that same day, forwarding the letter she received from Ms. Talarico. The Custodian also included copies of responses to the preceding OPRA requests submitted by the Complainant.

The Custodian did not elaborate further beyond Ms. Talarico’s reasons for denial; that the record was exempt as a criminal investigatory record via N.J.S.A. 47:1A-1.1, and the record pertained to a juvenile charged with delinquency via N.J.S.A. 2A:4A-60.

Additional Submissions:

On July 29, 2020, the GRC requested additional information from the Custodian. Specifically, the GRC asked whether the suspect(s) involved in the racoon incident were juveniles at the time of the incident.

On July 30, 2020, the Custodian responded to the GRC’s request for additional information. Therein, the Custodian certified that at the time of the incident the suspects were juveniles and as of July 29, 2020 remained juveniles.

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:

The provisions of [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;

Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

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

The Council has previously held that pursuant to N.J.S.A. 2A:4A-60(a), public access to “[s]ocial, medical, psychological, legal and other records of the court and probation division, and *records of law enforcement agencies*” involving juveniles has been substantially restricted. (Emphasis added). See Gabardi v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2008-259 (December 2009); Paine v. Barrington Police Dep’t (Camden), GRC Complaint No. 2016-197 (January 2018).

In the instant matter, the Complainant sought complaints and tickets pertaining to the beating death of a raccoon. In response, the Custodian relied on the statement from Ms. Talarico asserting that responsive record on hand involved juveniles and was therefore exempt from access under N.J.S.A. 2A:4A-60. In response to the GRC’s request for additional information, the Custodian affirmed that the suspects involved in the incident were juveniles and remain so as of July 29, 2020. Additionally, the Complainant provided no evidence demonstrating that she qualifies for any of the exceptions under N.J.S.A. 2A:4A-60(a)(1) to (13).

Accordingly, the evidence of record demonstrates that the Custodian lawfully denied access to the Complainant’s March 11, 2019 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant is restricted from access to the responsive record pursuant to N.J.S.A. 2A:4A-60(a), since the Custodian certified that the matter involves juvenile suspects and OPRA does not abrogate exemptions on public access to records pursuant to other statutes. See N.J.S.A. 47:1A-9(a), Gabardi, GRC 2008-259, and Paine, GRC 2016-197. Furthermore, since the record is exempt pursuant to N.J.S.A. 2A:4A-60(a), the Council need not address whether same is exempt as criminal investigatory records under N.J.S.A. 47:1A-1.1.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the evidence of record demonstrates that the Custodian lawfully denied access to the Complainant’s March 11, 2019 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant is restricted from access to the responsive record pursuant to N.J.S.A. 2A:4A-60(a), since the Custodian certified that the matter involves juvenile suspects and OPRA does not abrogate exemptions on public access to records pursuant to other statutes. See N.J.S.A. 47:1A-9(a), Gabardi v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2008-259 (December 2009); Paine v. Barrington Police Dep’t (Camden), GRC Complaint No. 2016-197 (January 2018). Furthermore, since the record is exempt pursuant to N.J.S.A. 2A:4A-60(a), the Council need not address whether same is exempt as criminal investigatory records under N.J.S.A. 47:1A-1.1.

Prepared By: Samuel A. Rosado
Staff Attorney

August 18, 2020