



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**

**July 26, 2022 Government Records Council Meeting**

Peter Antonucci  
Complainant

Complaint No. 2020-207

v.

City of Long Branch (Monmouth)  
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 2022 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 current Custodian complied with the Council’s May 31, 2022 Interim Order because she responded within the extended time frame and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Notwithstanding the original Custodian’s insufficient response, she lawfully denied access to the outstanding responsive records to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the outstanding records were protected from disclosure under the Attorney General’s Internal Affairs Policy and Procedures’ grant of confidentiality for internal affairs records. See N.J.S.A. 47:1A-9(b); N.J.S.A. 40A:14-181; Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. 124, 142-43 (2022).
3. Although the original Custodian provided an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-5(g), the original Custodian lawfully denied access to the Complainant’s OPRA request seeking surveillance footage and internal affairs records. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Pursuant to the Council’s May 31, 2022 Interim Order the Complainant has not achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Complainant failed to achieve the relief sought in his

Denial of Access Complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 71.

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 July 2022

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: July 28, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
July 26, 2022 Council Meeting**

**Peter Antonucci<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-207**

**v.**

**City of Long Branch (Monmouth)<sup>2</sup>  
Custodial Agency**

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

Regarding an incident where Richard Martinez was arrested by Long Branch Police Department (“LBPD”) on July 17, 2018, and processed at police headquarters:

1. “Any and all video/audio recordings for the length of time Mr. Martinez was present at headquarters.”
2. “All reports and e-mails authored related to this matter.”

**Custodian of Record:** Jeffrey Jotz<sup>3</sup>  
**Request Received by Custodian:** February 7, 2020  
**Response Made by Custodian:** February 26, 2020  
**GRC Complaint Received:** October 7, 2020

**Background**

May 31, 2022 Council Meeting:

At its May 31, 2022 public meeting, the Council considered the May 24, 2022 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 original Custodian’s initial response to the Complainant’s OPRA request was legally insufficient because she failed to fully respond to each item contained in the request or assert whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

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<sup>1</sup> Represented by Lawrence W. Luttrell, Esq. of the Law Offices of Lawrence William Luttrell, P.C. (Holmdel, NJ).

<sup>2</sup> Represented by Brian P. Trelease, Esq. of Rainone, Coughlin, Minchello, LLC (Iselin, NJ).

<sup>3</sup> The Custodian of Record at the time of the request was Kathy L. Schmelz. The current Custodian of Record is Heather Capone.

2. The adjudication of the common law issue is outside of the GRC's authority. See Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013). Specifically, the GRC does not have the authority to adjudicate the Complainant's common law arguments to the responsive records. N.J.S.A. 47:1A-7(b); Ciesla v. New Jersey Dep't of Health and Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012).
3. The requested video surveillance camera footage is exempt from disclosure under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016); Schulze v. Monmouth Cnty. Sheriff's Office, GRC Complaint No. 2018-108 (2019). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Long Branch Police Department and would create a risk to the safety of the persons therein. Thus, the original Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.
4. The original Custodian may have unlawfully denied access to the Complainant's OPRA request item No. 2. N.J.S.A. 47:1A-6. Specifically, the original Custodian may not withhold access to responsive records and e-mails under the internal affairs exemption solely on the basis that the underlying incident subsequently initiated said investigation. See O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Tasiopoulos v Warren Cnty. Prosecutor's Office, GRC Complaint No. 2011-231 (Interim Order dated July 29, 2014). The Custodian shall locate and provide the Complainant with responsive records. Should the records in fact fall under the internal affairs exemption, or any other OPRA exemption, the Custodian shall certify to such for each applicable record located.
5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>4</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
6. 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.

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<sup>4</sup> 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.

<sup>5</sup> "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."

<sup>6</sup> 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.

7. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On June 1, 2022, the Council distributed its Interim Order to all parties. That same day, Custodian's Counsel requested an extension of time to respond. The GRC granted an extension until June 21, 2022 to respond to the Order.

On June 21, 2022, the current Custodian responded to the Council's Interim Order, submitting certified confirmation of compliance to the Executive Director. The current Custodian certified that there were five (5) remaining records responsive to the OPRA request:

1. Complaint dated July 26, 2018 from Peter Antonucci to Internal Affairs Captain Joshua Bard related to the subject incident;
2. Letter dated October 18, 2018 from the Monmouth County Prosecutor's Office to Internal Affairs Captain Joshua Bard identifying corrective action resulting from the subject incident;
3. Internal Affairs investigation narrative report;
4. E-Mail dated December 12, 2018 from Internal Affairs Captain Joshua Bard to members of the Police Department issuing disciplinary action resulting from the subject incident;
5. Letter dated January 3, 2019, from Internal Affairs Captain Joshua Bard to Peter Antonucci regarding the disposition of his Internal Affairs Complaint.

The current Custodian certified that all the above records were generated and/or created as a result of the July 26, 2018 Internal Affairs Complaint. The current Custodian asserted that § 9.6 of the Attorney General Guidelines on Internal Affairs and Policy Procedures ("IAPP") exempted from disclosure "the nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential." The current Custodian asserted that none of the conditions permitting release of the records under § 9.6.1 are applicable here. The current Custodian further asserted that Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022) reaffirmed that internal affairs records were not subject to disclosure under OPRA. The current Custodian therefore requested that the GRC hold that the denial was appropriate and should dismiss the complaint with prejudice without fees and costs.

#### Analysis

#### Compliance

At its May 31, 2022 meeting, the Council ordered the Custodian to locate and provide the Complainant with responsive records, or in the alternative, certify that the responsive records were exempt from OPRA as constituting internal affairs records. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On June 1, 2022, 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 June 8, 2022.

On June 1, 2022, the same day as receipt of the Council's Order, the Custodian Counsel requested an extension of time to respond. The GRC granted the request that same day, extending the deadline to June 21, 2022. On June 21, 2022, the date of the deadline, the current Custodian responded in writing, certifying that all outstanding responsive records were exempt from disclosure as internal affairs records.

Therefore, the current Custodian complied with the Council's May 31, 2022 Interim Order because she responded within the extended time frame and simultaneously provided certified confirmation of compliance to the Executive Director.

### **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 also provides that its provisions:

shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

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

The New Jersey Supreme Court has held that Attorney General guidelines and directives have the "force of law" for police entities. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 565 (2017); Paff v. Ocean Cnty. Prosecutor's Office, 235 N.J. 1, 20-21 (2018). In particular, N.J.S.A. 40A:14-181 directed all law enforcement agencies in New Jersey to adhere to the policies and procedures set forth under the IAPP. Further, the IAPP explicitly provides that "[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information." IAPP at § 9.6.1. Thus, the grant of confidentiality for internal affairs records established by the IAPP is required policy for law enforcement agencies. See Rivera, 250 N.J. at 142-43. Consistent with the IAPP, the Council held in Wares v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-330 (June 2015) that internal affairs records are not subject to access under OPRA (citing N.J.S.A. 47:1A-9).

In response to the Council's Interim Order, the Custodian certified that there were five (5) records responsive to the Complainant's OPRA request, including the internal affairs complaint filed by the Complainant on July 26, 2018. The Custodian also certified that the remaining records

were created after the complaint was filed, including the internal affairs report, letters regarding the internal affairs investigation disposition, and an e-mail issuing disciplinary action as a result of the internal affairs investigation. The Custodian therefore argued that all the above records were exempt from disclosure as internal affairs records.

Upon reviewing the current Custodian's certification, N.J.S.A. 40A:14-181, and Rivera, 250 N.J. 124, the GRC is satisfied that the outstanding records were lawfully denied. The current Custodian certified that the remaining records were generated on or after the complaint filing and certified that no other responsive records exist. Further, the records comprise either the "nature and source" of the internal allegations such as the complaint, or the "resulting materials" such as the narrative report, and the letters and e-mails outlining the disposition and corrective action stemming from the investigation. See IAPP at § 9.6.1. Moreover, the Complainant has not provided any evidence to contradict the current Custodian's certification.

Accordingly, notwithstanding the original Custodian's insufficient response, she lawfully denied access to the outstanding responsive records to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the outstanding records were protected from disclosure under the IAPP's grant of confidentiality for internal affairs records. See N.J.S.A. 47:1A-9(b); N.J.S.A. 40A:14-181; Rivera, 250 N.J. at 142-43.

### **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 (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); 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 original Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-5(g), the original Custodian lawfully denied access to the

Complainant's OPRA request seeking surveillance footage and internal affairs records. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Prevailing Party Attorney's Fees**

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . . . A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct" (quoting Buckhannon Bd. & Care Home v. West Virginia Dep't of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." Id. at 603 (quoting Black's Law Dictionary 1145 (7<sup>th</sup> ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because "[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . ." Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). "But in interpreting New Jersey law, we look to state law precedent and the specific state statute before



us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[196 N.J. at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

In the instant matter, the Complainant requested audio and video recordings pertaining to an arrest occurring at the LBPD building. The Complainant also sought any reports and e-mails pertaining to the arrest. In response, the original Custodian denied access to a surveillance video of the incident under OPRA’s security and safety exemptions. Regarding the request for reports and e-mails, the original Custodian provided an arrest report but denied access to the remaining records under the confidentiality exemption for internal affairs records.

In its May 31, 2022 Interim Order, the GRC found that surveillance video was properly denied under OPRA’s security and safety exemptions, but ordered the Custodian to locate and determine whether the outstanding reports and e-mails were each exempt under exempt for internal affairs investigations. In response, the current Custodian identified the remaining records and certified that all were exempt under the internal affairs exemption. The evidence of record demonstrates that the records were properly denied since they were generated or created after the internal affairs complaint was filed. Therefore, the Complainant has not achieved the desired result and is not a prevailing party in this complaint.

Therefore, pursuant to the Council’s May 31, 2022 Interim Order the Complainant has not achieved “the desired result because the complaint brought about a change (voluntary or otherwise)

in the custodian's conduct." Teeters, 387 N.J. Super. at 432. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 71. Specifically, the Complainant failed to achieve the relief sought in his Denial of Access Complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 71.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The current Custodian complied with the Council's May 31, 2022 Interim Order because she responded within the extended time frame and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Notwithstanding the original Custodian's insufficient response, she lawfully denied access to the outstanding responsive records to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the outstanding records were protected from disclosure under the Attorney General's Internal Affairs Policy and Procedures' grant of confidentiality for internal affairs records. See N.J.S.A. 47:1A-9(b); N.J.S.A. 40A:14-181; Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124, 142-43 (2022).
3. Although the original Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-5(g), the original Custodian lawfully denied access to the Complainant's OPRA request seeking surveillance footage and internal affairs records. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Pursuant to the Council's May 31, 2022 Interim Order the Complainant has not achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Complainant failed to achieve the relief sought in his Denial of Access Complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 71.

Prepared By: Samuel A. Rosado  
Staff Attorney

July 19, 2022



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**

**May 31, 2022 Government Records Council Meeting**

Peter Antonucci  
Complainant

Complaint No. 2020-207

v.

City of Long Branch (Monmouth)  
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council (“Council”) considered the May 24, 2022 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 original Custodian’s initial response to the Complainant’s OPRA request was legally insufficient because she failed to fully respond to each item contained in the request or assert whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).
2. The adjudication of the common law issue is outside of the GRC’s authority. See Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013). Specifically, the GRC does not have the authority to adjudicate the Complainant’s common law arguments to the responsive records. N.J.S.A. 47:1A-7(b); Ciesla v. New Jersey Dep’t of Health and Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012).
3. The requested video surveillance camera footage is exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016); Schulze v. Monmouth Cnty. Sheriff’s Office, GRC Complaint No. 2018-108 (2019). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Long Branch Police Department and would create a risk to the safety of the persons therein. Thus, the original Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.
4. The original Custodian may have unlawfully denied access to the Complainant’s OPRA request item No. 2. N.J.S.A. 47:1A-6. Specifically, the original Custodian may not withhold access to responsive records and e-mails under the internal affairs exemption solely on the basis that the underlying incident subsequently initiated said investigation. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009);

Tasiopoulos v Warren Cnty. Prosecutor's Office, GRC Complaint No. 2011-231 (Interim Order dated July 29, 2014). The Custodian shall locate and provide the Complainant with responsive records. Should the records in fact fall under the internal affairs exemption, or any other OPRA exemption, the Custodian shall certify to such for each applicable record located.

5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**
6. 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.
7. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 31<sup>st</sup> Day of May 2022

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 1, 2022**

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<sup>1</sup> 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.

<sup>2</sup> "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."

<sup>3</sup> 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  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 31, 2022 Council Meeting**

**Peter Antonucci<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-207**

v.

**City of Long Branch (Monmouth)<sup>2</sup>  
Custodial Agency**

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

Regarding an incident where Richard Martinez was arrested by Long Branch Police Department (“LBPD”) on July 17, 2018, and processed at police headquarters:

1. “Any and all video/audio recordings for the length of time Mr. Martinez was present at headquarters.”
2. “All reports and e-mails authored related to this matter.”

**Custodian of Record:** Jeffrey Jotz<sup>3</sup>  
**Request Received by Custodian:** February 7, 2020  
**Response Made by Custodian:** February 26, 2020  
**GRC Complaint Received:** October 7, 2020

**Background<sup>4</sup>**

**Request and Response:**

On February 7, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On February 19, 2020, Mary Moss responded on the original Custodian’s behalf, seeking an extension of time to respond until February 26, 2020. On February 26, 2020, the original Custodian responded in writing, providing a copy of the arrest report pertaining to the incident. The original Custodian stated that while there was video surveillance footage, same was denied due to safety and security concerns. The original Custodian also stated that internal affairs records were confidential and not subject to public disclosure under the Attorney General Guidelines.

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<sup>1</sup> Represented by Lawrence W. Luttrell, Esq. of Law Offices of Lawrence William Luttrell, P.C. (Holmdel, NJ).

<sup>2</sup> Represented by Brian P. Trelease, Esq. of Rainone, Coughlin, Minchello, LLC (Iselin, NJ).

<sup>3</sup> The Custodian of Record at the time of the request was Kathy L. Schmelz.

<sup>4</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.

### Denial of Access Complaint:

On October 7, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the video record was not part of an “ongoing criminal investigation” since the matter at issue was completed at the time of the request. The Complainant asserted that he has seen the video in question as a Captain with the Long Branch Police Department (“LBPD”).

The Complainant next argued that the video footage would not fall under security and safety exemption. The Complainant noted that the New Jersey Supreme Court has held that “requests for video from surveillance cameras protecting public facilities are better analyzed under the common law right of access.” Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016). The Complainant argued that the video of the booking room was not for the purpose of “protecting public facilities” as contemplated by the Court since the area was a secured access section and not open to the public. The Complainant also asserted that any security concern would be moot since the area recorded had since been reconfigured. The Complainant also noted that portions of the footage had already been publicized and released to the public.

The Complainant also asserted that the blanket denial of the remaining records as “internal affairs” documents was improper. The Complainant argued that notwithstanding internal affairs investigations and personnel records, there should be records pertaining to this matter that would not fall under the umbrella of “internal affairs records.” The Complainant referenced records such as a Use of Force Report (“UFR”), complaint, supplemental reports, photographs/mug shots, and a CAD report.

### Statement of Information:<sup>5</sup>

On March 25, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Custodian received the Complainant’s OPRA request on February 7, 2020. The Custodian certified that Ms. Moss requested an extension of time on February 19, 2020. The Custodian certified that the Custodian responded in writing on February 26, 2020, providing the arrest report related to the incident, but denied access to the video recording under OPRA’s safety and security exemptions. The Custodian also certified that the Custodian denied access to the remainder of the request as seeking internal affairs records.

The Custodian first asserted that OPRA has two (2) security related exemptions. The Custodian asserted that OPRA exempts access to “security information or procedures . . . which if disclosed, would jeopardize security of the building or facility of persons therein.” N.J.S.A. 47:1A-1.1. The Custodian also asserted that OPRA exempts access to “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.” Id. The Custodian argued that the Gilleran Court held that the surveillance footage from a stationary camera at a town hall was not subject to disclosure under OPRA. The Custodian also noted that the GRC has previously held that surveillance footage is not subject to disclosure under OPRA.

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<sup>5</sup> On October 22, 2020, the complaint was referred to mediation. On March 4, 2021, the complaint was referred back for adjudication.

Schulze v. Monmouth Cnty. Sheriff's Office, GRC Complaint No. 2018-108 (2019). Further, the Custodian asserted that the GRC did not have jurisdiction to adjudicate requests made under the common law right of access. Ciesla v. New Jersey Dep't of Health and Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012).

The Custodian next asserted that the Complainant's status as an LBPD officer should not entitle him to access under OPRA. The Custodian contended that under Schulze, the GRC held that there were no "need-based exceptions" to OPRA's security exemption. The Custodian also argued that the Complainant's status with the LBPD was not pertinent to the matter and did not permit greater access.

The Custodian next contended that the remainder of the request consisted of records pertaining to internal affairs investigations. The Custodian asserted that the GRC has held that the Internal Affairs Policy and Procedures ("IAPP") and other Attorney General Guidelines have the force of law. O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010). The Custodian argued that since the remainder of responsive records are internal affairs records, they were exempt from disclosure in accordance with the IAPP and prior decisions.

The Custodian included a certification from Captain Joshua Bard of the LBPD, who certified that he was responsible for obtaining responsive records to the instant request. Captain Bard certified that in addition to the arrest report, the only other responsive reports and/or e-mails were generated in connection to an incident involving Mr. Martinez, which led to an internal affairs investigation.

#### Additional Submissions:

On April 1, 2021, the Complainant submitted a brief in response to the Custodian's SOI. The Complainant asserted that the Custodian failed to elaborate what security procedures, techniques, or information would be jeopardized to warrant non-disclosure. The Complainant maintained that the booking room in the video had since been renovated. The Complainant further asserted that a prior video showing the booking had been released by LBPD to the public.

The Complainant further asserted that the Custodian failed to justify a failure to release the other written records under OPRA and the common law right of access. The Complainant contended that there should be a Use of Force Report ("UFR") generated along with other written reports, and that same would not be covered by the personnel records exemption or criminal investigatory records exemption.

### Analysis

#### Sufficiency of Response

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. In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that ". . . [t]he Custodian's response was legally

insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Here, the Complainant requested audio/video records pertaining to a specific incident involving police. The Complainant also requested any other “reports” and “e-mails” generated due to the incident. The original Custodian responded to the Complainant’s request providing a copy of an arrest report and stating that a video recording of the incident was exempt under OPRA. The original Custodian then stated that “internal affairs records are confidential and not subject to public disclosure in accordance with the Attorney General Guidelines.”

The evidence of record here supports that the original Custodian did not fully address request item No. 2 seeking “reports” and “e-mails” generated from the incident. Although the original Custodian provided an arrest report presumably in response to item No. 2, the original Custodian did not explicitly state whether the recitation of the confidentiality of internal affairs records was in response to item No. 2 or an additional defense to the video recording. It was not until the SOI, through Captain Bard’s certification, that the Custodian stated that all other records generated with regard to the incident were exempt as internal affairs records. Thus, the original Custodian’s response to the subject OPRA request was insufficient in accordance with Paff, GRC 2007-272.

As such, the original Custodian’s initial response to the Complainant’s OPRA request was legally insufficient because she failed to fully respond to each item contained in the request or assert whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff, GRC 2007-272. See also Lenchitz, GRC 2012-265.

### **Common Law Access**

OPRA provides that the “[GRC] shall . . . receive, hear, review, and adjudicate a complaint filed by any person concerning a denial of access to a *government record* by a records custodian. . . .” N.J.S.A. 47:1A-7(b) (emphasis added). Additionally, OPRA provides that the GRC shall “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].” N.J.S.A. 47:1A-7(e) (emphasis added).

In the instant matter, the Complainant argued that he should have access to the requested video recording under the common law right of access as well as the other records denied as being part of an Internal Affairs investigation.

In Ciesla, 429 N.J. Super. at 146, the Appellate Division discussed the issue of the GRC’s ability to review access to records under the common law. The Court held that under OPRA, the GRC was restricted by the Legislature to review the disclosure of “government records”, rather than the more broadly termed “public records” under the common law. Id. at 146-47. The Court went on to hold that the powers and limitations outlined in N.J.S.A. 47:1A-7(b-f) drew the inference that the GRC has the power to adjudicate complaints of a denial of access only to that of a “government record” under OPRA. Id. at 147-48 (citing Paff v. New Jersey Dep’t of Labor, Bd.



of Review, 379 N.J. Super. 346, 352-52 (App. Div. 2005)). See also Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013) (holding that the GRC had no jurisdiction over a common law complaint). Based on the forgoing, the common law arguments raised by the Complainant are not within the GRC's authority to adjudicate. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-7(b).

Thus, the adjudication of the common law issue is outside of the GRC's authority. See Rowan, Jr., GRC 2011-347. Specifically, the GRC does not have the authority to adjudicate the Complainant's common law arguments to the responsive records. N.J.S.A. 47:1A-7(b); Ciesla, 429 N.J. Super. at 146-48.

### **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.

### **Video Recording**

Two (2) of OPRA's exemptions pertain to records excluded on security-related grounds. First, OPRA exempts access to "security information or procedures . . . which, if disclosed, would jeopardize security of the building or facility or persons therein." N.J.S.A. 47:1A-1.1. Second, OPRA exempts access to "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property." Id.

Regarding the disclosure of security camera footage, the Gilleran Court held that, taken together, both exemptions "endeavor to keep from public scrutiny a swath of information that, if disclosed, would jeopardize or would undermine the effectiveness of the security system for public buildings (property) and the people within them." Id. at 172.

The Court maintained that a determination of access to camera footage requires more than analyzing the specific content contained in the footage:

[T]he scope of the camera's surveillance area (the width, depth, and clarity of the images, as well as when it operates, i.e. intermittently and, if so, at what intervals and are they regular) is the information that the Township seeks to protect. That the video may contain depictions of otherwise non-confidential views of an area outside a public building or may capture persons moving in a public area is not a complete way in which to assess the security worth of this requested government record. Such analysis provides a stunted review for addressing the purpose underlying the security exemptions.

[Id. at 175-76.]

Thus, the Court held that, “when the public-security concern is that access to the videotape product of the surveillance medium itself reveals security-compromising information, then the exemptions can be relied on to bar, categorically, under OPRA, a security system's otherwise confidential surveillance product.” Id. at 176.

In Schulze, GRC 2018-108, the complainant sought a digital copy of the video surveillance footage of an incident that took place in a County courtroom. The complainant identified himself as a County Sheriff's Officer seeking video surveillance footage of the incident in which he was involved. In applying Gilleran, the Council held that the custodian lawfully denied access to the requested footage, noting that the release of which would reveal information about the court's security operation and its vulnerabilities. The Council further held that the status of the complainant as an officer involved in the identified incident, as OPRA did not have a “need-based” exemption under OPRA. N.J.S.A. 47:1A-1.1.

In the instant matter, the Complainant sought a video recording pertaining to an arrest at LBPB. The Custodian denied access under OPRA's security exemptions, citing Gilleran, 227 N.J. 159. In response, the Complainant contended that the booking room depicted in the recording no longer existed as it did at the time. The Complainant also noted that the recording had previously been released to the public by LBPB, and therefore further undermined the security concerns raised by the Custodian. The Complainant also attested to his knowledge of the incident depicted in the video as a Captain with LBPB.

When applying Gilleran to the instant matter, the GRC is satisfied that the Custodian lawfully denied access to the requested security footage. Notwithstanding the current state of the booking room depicted in the recording, the Gilleran Court clearly held that OPRA's exemptions were intended to protect the security of government facilities. Those security concerns expand beyond what parts of the building are depicted by the security camera and into the externalities such as the coverage area, physical location, and operational period. Gilleran, 227 N.J. at 175-76. Furthermore, the Complainant's status as a Captain with LBPB does not entitle him to access the records under OPRA. Like the complainant in Schulze, there is no “need based exceptions” to OPRA's security exemption. Schulze, GRC 2018-108.

Therefore, the requested video surveillance camera footage is exempt from disclosure under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. at 174-77; Schulze, GRC 2018-108. Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the LBPB and would create a risk to the safety of the persons therein. Thus, the original Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.

#### Audio Recording, Records, E-Mails Pertaining to Incident

OPRA also 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).

The Appellate Division has held that Attorney General Guidelines have the force of law for police entities. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). In particular, the IAPP is bound upon all law enforcement agencies in New Jersey pursuant to statute. See N.J.S.A. 40A:14-181. Further, the IAPP explicitly provides that “[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information.” IAPP at 9.6.1 (August 2020). Consistent with the IAPP, the Council held in Wares v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-330 (June 2015) that internal affairs records are not subject to access under OPRA (citing N.J.S.A. 47:1A-9). However, the O’Shea court noted that the “speculative use” of an otherwise responsive record in an internal affairs investigation did not “provide the necessary basis for precluding access under OPRA.” 410 N.J. Super. at 386.

In Tasiopoulos v Warren Cnty. Prosecutor’s Office, GRC Complaint No. 2011-231 (Interim Order dated July 29, 2014), the complainant requested records pertaining to a DUI incident. The custodian denied access in part to an e-mail correspondence under the internal affairs exemption. The GRC transferred the matter to the OAL for a fact-finding hearing to determine the applicability of the exemption. After conducting an *in camera* review, the Honorable Tahesha L. Way, ALJ, held that the requested e-mail was unlawfully withheld from access. Judge Way found that because the e-mail “did not discuss aspects of the internal investigation that were privileged and unknown to members of the public,” same could not be withheld from access under the exemption.

In the instant matter, the Complainant requested “all reports and e-mails authored related to the matter.” The Custodian provided a copy of the arrest report generated from the incident but denied the remainder of the request under the internal affairs exemption. The Complainant argued that records generated in direct relation to the underlying incident, such as the complaint, UFR, or CAD report should not be withheld under the exemption. The Complainant asserted that those records were generated prior to initiating the internal affairs investigation.

Upon review, the GRC finds that the original Custodian may have unlawfully denied access. Although the Custodian provided a copy of the arrest report, imposing a blanket denial under the internal affairs exemption of all remaining reports and e-mails pertaining to the underlying incident invites the potential for improperly shielding records that may otherwise be disclosable, such as UFRs. See O’Shea, 410 N.J. Super. at 386. Similar to the e-mail correspondence in Tasiopoulos and as noted by the Complainant, records created in the normal course from the underlying incident such as a UFR, CAD report, or the complaint may not fall within the exemption on the basis that the incident subsequently resulted in an internal affairs investigation.

Accordingly, the original Custodian may have unlawfully denied access to the Complainant’s OPRA request item No. 2. N.J.S.A. 47:1A-6. Specifically, the original Custodian may not withhold access to responsive records and e-mails under the internal affairs exemption solely on the basis that the underlying incident subsequently initiated said investigation. See O’Shea, 410 N.J. Super. at 386; Tasiopoulos, GRC 2011-231. The Custodian shall locate and provide the Complainant with responsive records. Should the records in fact fall under the internal

affairs exemption, or any other OPRA exemption, the Custodian shall certify to such for each applicable record located.

### **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.

### **Prevailing Party Attorney's Fees**

The Council defers analysis of whether the Complainant is a prevailing party 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 original Custodian's initial response to the Complainant's OPRA request was legally insufficient because she failed to fully respond to each item contained in the request or assert whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).
2. The adjudication of the common law issue is outside of the GRC's authority. See Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013). Specifically, the GRC does not have the authority to adjudicate the Complainant's common law arguments to the responsive records. N.J.S.A. 47:1A-7(b); Ciesla v. New Jersey Dep't of Health and Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012).
3. The requested video surveillance camera footage is exempt from disclosure under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016); Schulze v. Monmouth Cnty. Sheriff's Office, GRC Complaint No. 2018-108 (2019). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Long Branch Police Department and would create a risk to the safety of the persons therein. Thus, the original Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.
4. The original Custodian may have unlawfully denied access to the Complainant's OPRA request item No. 2. N.J.S.A. 47:1A-6. Specifically, the original Custodian may not withhold access to responsive records and e-mails under the internal affairs exemption solely on the basis that the underlying incident subsequently initiated said investigation. See O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Tasiopoulos v Warren Cnty. Prosecutor's Office, GRC Complaint No. 2011-231

(Interim Order dated July 29, 2014). The Custodian shall locate and provide the Complainant with responsive records. Should the records in fact fall under the internal affairs exemption, or any other OPRA exemption, the Custodian shall certify to such for each applicable record located.

5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>6</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>7</sup> to the Executive Director.<sup>8</sup>**
6. 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.
7. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

May 24, 2022

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<sup>6</sup> 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.

<sup>7</sup> "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."

<sup>8</sup> 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.