



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**June 28, 2022 Government Records Council Meeting**

Brian F. McBride  
Complainant

Complaint No. 2020-212

v.

Township of Washington (Gloucester)  
Custodian of Record

At the June 28, 2022 public meeting, the Government Records Council (“Council”) considered the June 21, 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 did not unlawfully deny access to the OPRA request seeking Officer Andrew Nichols’ body worn camera footage of an incident dated March 7, 2017, because the Custodian certified, and the record reflects, that the Complainant received all responsive records. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010). Further, the GRC has no authority to determine whether the provided footage was accurate. See Gillespie v. Newark Pub. Schools, GRC Complaint No. 2004-105 (November 2004); and Kwanzaa v. Dep’t of Corr., GRC Complaint No. 2004-167 (March 2005).
2. The original Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request seeking body worn camera footage of Officer Christopher Tarasevich pertaining to an incident dated March 7, 2017. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6. See Pusterhofer v. N.J. Dep’t of Educ., GRC 2005-49 (July 2005).

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 28<sup>th</sup> Day of June 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 30, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 28, 2022 Council Meeting**

**Brian F. McBride<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-212**

v.

**Township of Washington (Gloucester)<sup>2</sup>  
Custodial Agency**

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

June 1, 2017 OPRA Request:<sup>3</sup> “[A]ll video and/or audio footage from the on board camera of the body camera assigned to Andrew Nichols. Date range requested is for the shift beginning on March 8, 2017.”

November 21, 2017 OPRA Request:<sup>4</sup> “[A]ll records for camera(s) worn by Officer Andrew Nichols for March 7, 2017. If a camera was not worn or not activated for any reason, I request all records documenting the reason for any exceptions.”

December 23, 2017 OPRA Request: “[B]ody camera video from Officer Christopher Tarasevich on March 7, 2017 from 19:44-20:57.”

**Custodian of Record:** Christine Ciallella<sup>5</sup>

**Request Received by Custodian:** June 1, 2017; November 21, 2017

**Response Made by Custodian:** June 1, 2017

**GRC Complaint Received:** October 15, 2020

**Background**<sup>6</sup>

**Request and Response:**

On June 1, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. That same day, Detective

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

<sup>2</sup> Represented by Patrick J. Madden, Esq. of Law Offices of Patrick J. Madden, L.L.C. (Haddonfield, NJ). Previously represented by Carmen Saginario, Jr., Esq. of Capehart & Scatchard, P.A. (Mount Laurel, NJ).

<sup>3</sup> The Complainant sought additional records not at issue in this complaint.

<sup>4</sup> The Complainant sought additional records not at issue in this complaint.

<sup>5</sup> The Custodian of Record at the time of the request was Leo Selb.

<sup>6</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.

Sergeant Robert Stokley responded on the original Custodian's behalf in writing denying access to the requested record. Det. Sgt. Stockley referenced a policy section, "11.2 Disclosure of [Body-Worn Camera ("BWC")] Recordings Pertaining to Criminal Investigations", stating:

Except as otherwise provided in section 10.1, a BWC recording of an event or encounter that involves an investigation of a criminal offense as defined in section 2(e) shall not be shared with provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, or by a court order, or unless the law enforcement agency in consultation with the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.

On November 21, 2017, the Complainant submitted another OPRA request to the original Custodian seeking the above-mentioned records. On or about December 7, 2017, the original Custodian responded to the Complainant providing a BWC recording from Officer Nichols.<sup>7</sup>

On December 23, 2017, the Complainant submitted another OPRA request to the original Custodian seeking the above-mentioned records. On or before December 28, 2017, the original Custodian responded to the Complainant in writing stating that no responsive records exist.<sup>8</sup>

#### Denial of Access Complaint:

On October 15, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted he received a police report pertaining to a service call and requested the BWC footage depicting the incident. The Complainant asserted that he was denied access on the same day he submitted his June 1, 2017 OPRA request. The Complainant then asserted that he was given approximately six (6) minutes of BWC from Officer Nichols in response to a subsequent request. The Complainant contended that based upon the police report he received, there should have been over an hour of BWC footage. The Complainant therefore contended he was unlawfully denied access to the remainder of the footage.

On November 17, 2020, the Complainant filed an amended Denial of Access Complaint with the GRC. The Complainant clarified that he submitted his second request for Officer Nichols' BWC footage on November 21, 2020 and received the approximately six (6) minutes of footage. The Complainant also asserted that he submitted another OPRA request on December 23, 2017, seeking the BWC footage of Officer Tarasevich, who also responded to the service call along with Officer Nichols.

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<sup>7</sup> Neither the Custodian nor the Complainant provided a copy of the Custodian's response to this request.

<sup>8</sup> Neither the Custodian nor the Complainant provided a copy of the Custodian's response to this request.

The Complainant asserted that when viewing Officer Nichols' video footage, it shows Officer Tarasevich wearing his BWC device with the recording light activated. The Complainant asserted that he sought the full unedited BWC videos of both officers and was unlawfully denied.<sup>9</sup>

Statement of Information:

On November 24, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that the original Custodian received the Complainant's OPRA requests on June 1, 2017 and November 21, 2017. The Custodian did not assert when the original Custodian received the December 23, 2020 OPRA request. The Custodian certified that her search involved the Township of Washington's ("Township") Police Department, which revealed seven minutes and forty-four seconds of BWC from Officer Nichols. The Custodian certified that based upon the Complainant's admission, the original Custodian responded in writing on December 7, 2017, providing the Complainant with a copy of the footage. The Custodian asserted that no other footage existed or exists which may have been responsive.

The Custodian asserted that she conducted a search for any additional BWC footage as requested by the Complainant. The Custodian contended that the Complainant previously received the unedited footage from Officer Nichols, and no additional footage exists. The Custodian further asserted that an initial search was conducted regarding BWC footage from Officer Tarasevich, but that no responsive records exist. The Custodian asserted that the Complainant's requests were not denied, and the matter should be dismissed.

Additional Submissions:<sup>10</sup>

On November 25, 2020, the Complainant submitted a response to the SOI. The Complainant asserted that the Washington Township Police Department ("WPD") issued general orders requiring BWC to be operative during the entire encounter with a citizen. The Complainant further stated that an internal investigation revealed that the BWCs for both officers were operating properly and cleared of all wrongdoing. The Complainant therefore argued that this challenged the Custodian's assertion that no records existed.

The Complainant next argued that the SOI lacked any reports or information on the servicing and maintenance of the BWCs themselves, and that the GRC should order an *in camera* review to ensure that they were in proper working order. Furthermore, the Complainant argued that the Township recently fired its IT professional due to having active warrants and allegedly threatening to delete WPD files. The Complainant asserted that the SOI failed to verify that this professional did not delete police records.

On December 2, 2020, the Complainant submitted additional correspondence to the GRC, requesting that the GRC perform an *in camera* review of the internal affairs investigation of the two officers. The Complainant maintained that the officers did not comport to the Attorney General

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<sup>9</sup> The Complainant subsequently raised an objection to representation of the Custodian's previous firm but has since rescinded his objection with the introduction of Custodian's current representation.

<sup>10</sup> Between November 30, 2020, and December 1, 2020, the Complainant and a firm representing the Custodian's previous counsel exchanged correspondence that is not relevant to the current matter.

Directive 2015-1 (“Directive 2015-1”) regarding BWCs and submitted additional OPRA requests.<sup>11</sup>

## 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.

Additionally, OPRA delineates the Council’s powers and duties. N.J.S.A. 47:1A-7(b). Such powers and duties do not include authority over the content of a record. See Gillespie v. Newark Pub. Schools, GRC Complaint No. 2004-105 (November 2004) (holding that OPRA “concerns access to government records and pursuant to N.J.S.A. 47:1A-7(b) the Council does not have the jurisdiction to determine the validity of a record.”), and Kwanzaa v. Dep’t of Corr., GRC Complaint No. 2004-167 (March 2005) (holding that the Council “does not oversee the content of documentation” but “does oversee the disclosure and non-disclosure of documents.”).

### Officer Nichols’ BWC Footage

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. The Council held that the custodian’s certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian’s burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Here, the Complainant asserted that he received a partial copy of Officer Nichols’ BWC footage but claims that the footage was incomplete. The Complainant contended that the police report of the incident suggested that the footage should have been over an hour long. The Custodian certified that the Complainant received what was in possession by the Township, which was BWC footage lasting seven (7) minutes and forty-four (44) seconds. The Custodian further certified that she conducted another search for additional BWC footage and certified that none exists.

Having reviewed the evidence, the GRC finds that this complaint more closely mirrors the facts in Danis, GRC 2009-156. Specifically, the original Custodian responded to the Complainant’s November 21, 2017 OPRA request by providing the BWC footage of Officer Nichols. The Custodian certified in the SOI that she conducted an additional search for responsive

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<sup>11</sup> The GRC notes that it is authorized to perform *in camera* reviews of records to determine whether a custodian correctly asserted an exemption to a record that was denied in part or whole. Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005). The forgoing does not give the GRC authority to review agency processes or investigations to determine their lawfulness.

records but that none exist. Furthermore, while the Complainant contends that the BWC footage should be longer based upon the police report, the GRC does not have authority over the contents of a record, including whether BWC footage should be a certain length. See Gillespie, GRC 2004-105; and Kwanzaa, GRC 2004-167.

Accordingly, the original Custodian did not unlawfully deny access to the Complainant's OPRA request seeking Officer Nichols' BWC footage of an incident dated March 7, 2017, because the Custodian certified, and the record reflects, that the Complainant received all responsive records. N.J.S.A. 47:1A-6; Danis, GRC 2019-156. Further, the GRC has no authority to determine whether the provided footage was accurate. See Gillespie, GRC 2004-105; and Kwanzaa, GRC 2004-167.

### Officer Tarasevich's BWC Footage

The GRC has previously found that, in light of a custodian's certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian's certification, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC 2005-49 (July 2005). In the instant matter, the Complainant sought the BWC footage of Officer Tarasevich who responded to the same service call as Officer Nichols. The Complainant asserted that he received a response from the original Custodian stated that no responsive records exist. In the SOI, the Custodian certified that she conducted another search for BWC footage from Officer Tarasevich pertaining to the incident, but no responsive records were located. The Complainant contended that the footage from Officer Nichols demonstrated that Officer Tarasevich was wearing a BWC and should have activated same according to Directive 2015-1. However, whether Officer Tarasevich should have activated his BWC at the time and thus create a record is not within the GRC's authority to adjudicate. See Gillespie, GRC 2004-105; and Kwanzaa, GRC 2004-167.<sup>12</sup>

Accordingly, the original Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request seeking BWC footage of Officer Tarasevich pertaining to an incident dated March 7, 2017. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6. See Pusterhofer, GRC 2005-49.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The original Custodian did not unlawfully deny access to the OPRA request seeking Officer Andrew Nichols' body worn camera footage of an incident dated March 7, 2017, because the Custodian certified, and the record reflects, that the Complainant received all responsive records. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010). Further, the GRC has no authority to determine whether the provided footage was accurate. See Gillespie v. Newark Pub. Schools, GRC Complaint No. 2004-105

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<sup>12</sup> The GRC notes that under §8 of Directive 2015-1, law enforcement agencies were required to retain BWC footage for only ninety (90) days under normal circumstances.

(November 2004); and Kwanzaa v. Dep't of Corr., GRC Complaint No. 2004-167 (March 2005).

2. The original Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request seeking body worn camera footage of Officer Christopher Tarasevich pertaining to an incident dated March 7, 2017. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6. See Pusterhofer v. N.J. Dep't of Educ., GRC 2005-49 (July 2005).

Prepared By: Samuel A. Rosado  
Staff Attorney

June 21, 2021