



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

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

Brian F. McBride  
Complainant

Complaint No. 2020-231

v.

Township of Washington (Gloucester)  
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 the Custodian borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005); Perry v. N.J. Dep’t of Corr., GRC Complaint No. 2012-237 (June 2013).

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 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 2, 2022**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

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

**GRC Complaint No. 2020-231**

v.

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

**Records Relevant to Complaint:** Electronic copies via e-mail of the body worn camera (“BWC”) footage taken by Officer Kris Hice during an incident occurring on August 6, 2019 at 10:00AM.

**Custodian of Record:** Christine Ciallella

**Request Received by Custodian:** May 15, 2020

**Response Made by Custodian:** June 18, 2020

**GRC Complaint Received:** December 1, 2020

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

**Request and Response:**

On May 15, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded to the Complainant in writing stating that all OPRA requests required an extension of time to respond. On June 18, 2020, the Custodian responded to the Complainant stating that no responsive records exist.

**Denial of Access Complaint:**

On December 1, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the police report in his possession<sup>4</sup> indicated that Officer Hice’s BWC was activated during the incident in question. The Complainant also asserted that the Custodian’s response provided no explanation for the discrepancy. The Complainant contended that the lack of responsive records was a violation of the Washington Police Department’s (“WPD”) general orders regarding BWCs.

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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 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.

<sup>4</sup> The Complainant included a copy of the police report as part of his complaint.

### Statement of Information:

On March 12, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 15, 2020. The Custodian certified that her search included contacting WPD’s Clerk. The Custodian certified that she responded in writing on June 18, 2020, stating that no responsive records exist.

The Custodian asserted that the requested BWC footage no longer existed since the request was made approximately nine (9) months after the incident at issue. The Custodian asserted that in accordance with WPD General Order 13:25, and consistent with the Attorney General’s Guidelines, BWC footage is retained for ninety (90) days and then purged automatically from the storage system. The Custodian argued that since the incident at issue occurred on August 6, 2019, the BWC footage would have been purged on or about September 6, 2019. The Custodian attached a copy of the Attorney General Law Enforcement Directive No. 2015-1 (“Directive No. 2015-1”) and WPD General Order 13:25 (“GO 13:25”) as part of the SOI.

### Analysis

#### Unlawful Denial of Access

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

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). In Perry v. N.J. Dep’t of Corr., GRC Complaint No. 2012-237 (June 2013), the complainant submitted an OPRA request on June 11, 2012, seeking access to surveillance footage recorded on May 9, 2012. The custodian initially denied access under the New Jersey Department of Corrections’ regulations, but subsequently certified in the SOI that any recorded footage would have been overwritten prior to the date of the OPRA request in accordance with the retention guidelines. The Council thus held that the custodian lawfully denied access to said records, if any, because none existed. Id. at 4 (citing Pusterhofer, GRC 2005-49). See also Stolte v. N.J. State Police, GRC Complaint Nos. 2015-33 & 2015-89 (November 2015).

A review of the evidence supports a finding consistent with Perry, GRC 2012-237. The Complainant submitted his OPRA request on May 15, 2020, seeking BWC footage pertaining to an incident that occurred on August 6, 2019, and included a copy of the police report indicating that BWC footage was taken at the time. However, the Custodian certified that no responsive records exist, stating that the footage had been purged per WPD policy. The Custodian provided copies of Directive No. 2015-1 and GO 13:25, indicating that BWC footage is automatically purged ninety (90) days after the incident. Thus, the BWC in question would have been purged on or about November 4, 2019, or more than six (6) months prior to the request. Additionally, the Complainant did not provide any evidence to refute the Custodian’s certification.

Therefore, the Custodian borne her burden of proof that she lawfully denied access to the Complainant's OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49; Perry, GRC 2012-237.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian borne her burden of proof that she lawfully denied access to the Complainant's OPRA request because the Custodian certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005); Perry v. N.J. Dep't of Corr., GRC Complaint No. 2012-237 (June 2013).

Prepared By: Samuel A. Rosado  
Staff Attorney

May 24, 2022