



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**August 30, 2022 Government Records Council Meeting**

Richard Battaglia  
Complainant

Complaint No. 2021-112

v.

Parsippany-Troy Hills Public Library (Morris)  
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council (“Council”) considered the August 23, 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. Because Mr. Madin failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to submit the OPRA request the Custodian, Mr. Madin violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
2. The requested video surveillance camera footage is exempt from disclosure under OPRA’s security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Parsippany-Troy Hills Public Library and would create a risk to the safety of the persons therein. Thus, Mr. Madin lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.
3. Mr. Madin violated OPRA because he failed to forward the subject OPRA request to the Custodian or return it to the Complainant and direct him to file it with the proper custodian. N.J.S.A. 47:1A-5(h). However, the evidence of record supports that the requested records were exempt from disclosure. Additionally, the evidence of record does not indicate that Mr. Madin violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Madin’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.

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 30<sup>th</sup> Day of August 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: September 1, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 30, 2022 Council Meeting**

**Richard Battaglia<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-112**

v.

**Parsippany-Troy Hills Public Library (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via pick-up of: “Building video recorder views of scenes [at] Parsippany Library 449 Halsey as on April 20, 2021.  
Time: between 4pm [and] 8pm.  
Location: Library entry area and left area at computer by window facing [the] road depicting worker accosting [sic] person.”

**Custodian of Record:** Melissa Kuzma  
**Request Received by Custodian:** April 28, 2021  
**Response Made by Custodian:** May 7, 2021  
**GRC Complaint Received:** May 25, 2021

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

**Request and Response:**

On or about April 28, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 7, 2021, Khaled Madin, Esq., the Municipal Clerk for the Township of Parsippany-Troy Hills (“Township”), responded to the Complainant in writing denying access to request. Mr. Madin stated that the records were exempt under OPRA as it sought information which, if disclosed, would jeopardize the security of the building persons therein.

**Denial of Access Complaint:**

On May 25, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on April 20, 2021 he visited the Parsippany-Troy Hills Public Library (“Library”) and was allegedly assaulted by a

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

<sup>2</sup> Represented by Douglas S. Zucker, Esq., of Weiner Law Group, LLP (Parsippany, 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.

member of the Library staff. The Complainant asserted that he verbally requested the video camera footage on April 21, 2021, but later submitted the OPRA request at issue on April 28, 2021.

The Complainant contended that he was denied access by the Township Clerk and contacted the Township's police department to open a case of obstruction of justice by withholding evidence.

Statement of Information:

On May 19, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she did not receive the OPRA request at issue as it was sent to the Township and not the Library. However, the Custodian certified that on April 21, 2021, the Library's Emerging Technologies ("ET") Librarian viewed records of the security camera located around the area requested and for the date and time requested. The Custodian certified that there was no Library security camera facing the "left area at computer by window facing [the] road" as requested. The Custodian certified that she did download footage depicting the Library's "entry area" between 7:18PM through 7:58PM, which covered six (6) minutes prior to the Complainant's arrival at the Library though three (3) minutes after the Complainant left.

The Custodian certified that Mr. Madin received the Complainant's OPRA request on April 28, 2021, and responded to the Complainant on May 7, 2021, stating that the records were exempt under OPRA.

The Custodian asserted that the located entry footage was exempt from disclosure for several reasons. The Custodian first contended that the record constituted a library record under N.J.S.A. 18A:73-43.1. The Custodian asserted that N.J.S.A. 18A:73-43.2 exempted library records which contain names or personally identifying details regarding library users, and the footage at issue depicted multiple Library patrons in addition to the Complainant and staff. The Custodian further asserted that this statute coincides with OPRA's privacy exemption. See Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009).

The Custodian next asserted that the footage was exempt under OPRA's security related exemptions. See N.J.S.A. 47:1A-1.1. The Custodian asserted that the Supreme Court has held that video surveillance footage that reveals the security capacity for a public building did not require disclosure under OPRA. See Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 176 (2016). The Custodian argued that disclosure of the footage would reveal information about the Library's security operations, including blind spots, positioning, and camera quality. The Custodian noted that the GRC has previously held that security camera footage was exemption from OPRA on this basis. See Scutro v. Cnty. of Union, GRC Complaint No. 2016-315 and 2016-316 (March 2019).

The Custodian also contended that for the request seeking video footage of the "left area at computer by window facing road, depicting worker accousting [sic] person," while such footage would be exempt under OPRA's security exemptions, no such footage exists in the first place. The Custodian asserted that the ET Librarian reviewed the footage on April 20, 2021 and found that none of the footage focused on that area at the requested time. The Custodian therefore argued that

because no responsive records exist for this portion of the request, there was no unlawful denial of access. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

### Analysis

#### Forwarding or Directing an OPRA Request

OPRA provides that “[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.” N.J.S.A. 47:1A-5(h).

In Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007), the complainant filed a Denial of Access Complaint after not receiving a response from the custodian. On October 4, 2006, OPRA Manager Joyce Lanier asserted that the custodian never received the request because it was sent directly to Lieutenant Caroline Clark of the City of Newark Police Department. Based on the facts presented, the Council held that “. . . [because] the Newark Police Department employee, [Lt. Clark] did not forward the Complainant’s request form or direct the Complainant to the [Custodian], . . . [Lt. Clark] has violated N.J.S.A. 47:1A-5(h).” Id. at 5. See also Morgano v. N.J. Office of the Pub. Defender, Essex Cnty., GRC Complaint No. 2008-79 (July 2008) (citing Mourning v. Dep’t of Corr., GRC Complaint No. 2006-75 (August 2006); Vessio v. N.J. Dep’t of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007)); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015).

In the instant matter, the Custodian certified that the Township and the Library had separate Records Custodians. Further, the evidence of record indicates that Mr. Madin received the Complainant’s OPRA request on April 28, 2021. Thereafter, Mr. Madin responded in writing directly to the Complainant on May 7, 2021. In the SOI, the Custodian certified that she never received the subject OPRA request and only spoke with the Complainant verbally. Given that the Library has a separate Records Custodian from the Township, Mr. Madin, like the employee in Kossup, should have either forwarded the OPRA request to the Custodian or returned it to the Complainant directing him to the Custodian.

Therefore, because Mr. Madin failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to submit the OPRA request the Custodian, Mr. Madin violated N.J.S.A. 47:1A-5(h). See Kossup, GRC 2006-174.

#### 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.

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 the instant matter, the Complainant sought in part a video recording from the Library showing the entryway on a particular date. Mr. Madin denied access under OPRA’s security exemptions. The Complainant asserted that the Library was withholding evidence and preventing discovery.

When applying Gilleran to the instant matter, the GRC is satisfied that Mr. Madin lawfully denied access to the requested security footage. Releasing the Library’s security camera footage would reveal security aspects going beyond what is depicted by the camera itself, to include the camera’s location and coverage area. 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 is 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.

Therefore, the requested video surveillance camera footage is exempt from disclosure under OPRA’s security exemptions. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. at 174-77. Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Library and would create a risk to the safety of the persons therein. Thus, Mr. Madin lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.

Additionally, because the Complainant's OPRA request is exempt under its security related exemptions, the GRC declines to address the Custodian's other defenses raised in the SOI.

### **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)).

In the matter before the Council, Mr. Madin violated OPRA because he failed to forward the subject OPRA request to the Custodian or return it to the Complainant and direct him to file it with the proper custodian. N.J.S.A. 47:1A-5(h). However, the evidence of record supports that the requested records were exempt from disclosure. Additionally, the evidence of record does not indicate that Mr. Madin violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Madin'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.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because Mr. Madin failed to forward the Complainant's OPRA request to the appropriate Custodian or direct the Complainant to submit the OPRA request the Custodian, Mr. Madin violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007).

2. The requested video surveillance camera footage is exempt from disclosure under OPRA's security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of the Parsippany-Troy Hills Public Library and would create a risk to the safety of the persons therein. Thus, Mr. Madin lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.
3. Mr. Madin violated OPRA because he failed to forward the subject OPRA request to the Custodian or return it to the Complainant and direct him to file it with the proper custodian. N.J.S.A. 47:1A-5(h). However, the evidence of record supports that the requested records were exempt from disclosure. Additionally, the evidence of record does not indicate that Mr. Madin's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Madin'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.

Prepared By: Samuel A. Rosado  
Staff Attorney

August 23, 2022