



**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**

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

Ryan Lawrence Johnson  
Complainant  
v.  
NJ State Police  
Custodian of Record

Complaint No. 2021-130

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 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).
2. The Custodian lawfully denied access to the Complainant’s June 6, 2021 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant sought internal affairs records, which are explicitly deemed confidential pursuant to the Attorney General’s Internal Affairs Policies and Procedures and not subject to access under OPRA. See Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021); Wares v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-330 (June 2015).

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**

**Ryan Lawrence Johnson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-130**

v.

**N.J. State Police<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “Any and all documents and/or recordings, including but not limited to audio files, video files, and/or paper files” related to New Jersey State Police (“NJSP”) “Internal Investigation No. 2020-0148” for the Complainant’s defense in a separate matter.

**Custodian of Record:** DSFC Kristina Pados  
**Request Received by Custodian:** June 6, 2021  
**Response Made by Custodian:** June 15, 2021  
**GRC Complaint Received:** June 22, 2021

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

**Request and Response:**

On June 6, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 15, 2021, the Custodian responded in writing denied the Complainant’s OPRA request because the requested records related to an internal affairs investigation. Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021).

**Denial of Access Complaint:**

On June 22, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s “blanket denial” was unlawful under OPRA. The Complainant contended that not only was he entitled to the requested records under N.J.S.A. 47:1A-1.1 as a “victim of a crime” but that Gannett supports disclosure under the common law.<sup>4</sup>

---

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

<sup>2</sup> Represented by Deputy Attorney General Kevin J. Dronson.

<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 also contended that the Custodian’s denial was a violation of the U.S. Constitution, the Americans with Disabilities Act (“ADA”), and federal common law. However, the complaint process set forth under OPRA, as Ryan Lawrence Johnson v. N.J. State Police, 2021-130 – Findings and Recommendations of the Executive Director

### Statement of Information:

On July 16, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 6, 2021. The Custodian certified that she responded in writing on June 15, 2021 denying the subject OPRA request because internal affairs (“IA”) records were expressly exempt from disclosure. N.J.S.A. 47:1A-9; N.J.S.A. 47:1A-10; N.J.S.A. 40A:14-181; Gannett, 467 N.J. Super. 385.

The Custodian argued that the confidentiality of IA records has been recognized in over forty years of case law. See *e.g.* River Edge Savings & Loan Ass’n v. Hyland, 165 N.J. Super. 540 (App. Div. 1979) (certif. denied, 81 N.J. 58 (1979)); State v. Marshall, 148 N.J. 89, 273 (1997); Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 107 (2020). The Custodian further noted that the Council has similarly held that IA records sought under OPRA were exempt from disclosure. Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (citing O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009)); Wares v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-330 (June 2015). The Custodian noted that the confidentiality clause can only be overcome in the limited circumstances of: 1) a showing of good cause to the Attorney General or County Prosecutor; or 2) by court order.

The Custodian argued that she lawfully denied access to the subject OPRA request because the Complainant sought IA records that are expressly exempt from disclosure under OPRA’s personnel exemption and the Attorney General’s Internal Affairs Policies and Procedures (“IAPP”). Gannett, 467 N.J. Super. 385; In Re: Attorney Gen. Law Enforcement Directive Nos. 2020-5 & 2020-6, 465 N.J. Super. 111 (App. Div. 2020). The Custodian further argued that her denial was consistent with all relevant case law and policies on IA records. The Custodian thus requested that the Council find that a lawful denial of access occurred and that this complaint be dismissed.

### Additional Submissions:

On July 19, 2021, the Complainant e-mailed Custodian’s Counsel noting that the Attorney General’s Law Enforcement Directive 2019-6 (“AG Directive 2019-6”) cites precedential case law requiring disclosure of IA records that supersede State and local case precedents cited in the SOI. On August 12, 2021, the Complainant again reiterated that AG Directive 2019-6 cites to both Brady v. Maryland, 373 U.S. 83, 87 (1963) and Giglio v. United States, 405 U.S. 150 (1972) as precedential case law requiring disclosure of the records sought here.

## Analysis

### 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.

---

well as the GRC’s authority to adjudicate complaints, do not include constitutional rights, ADA issues, or any other federal request processes. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7.

...” 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 Ciesla v. New Jersey Dep’t of Health and Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012), 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. N.J. 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).

In the instant matter, the Complainant argued that he was entitled to access the requested records under the common law right of access and that Gannett supports this position. However, based on the above, 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.

The Appellate Division has held that Attorney General Guidelines have the force of law for police entities. See O’Shea, 410 N.J. Super. at 382. 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, GRC 2014-330 (June 2015) that internal affairs records are not subject to access under OPRA (citing N.J.S.A. 47:1A-9). See also Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015); Rivera, GRC 2007-222. More recently, the State’s Appellate and Supreme Courts have similarly held that IA records are not disclosable under OPRA. Gannett, 467 N.J. Super. 385;

Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124, 142-143 (2022) (citing N.J.S.A. 47:1 A-9(b)).

Here, the Complainant sought access to records regarding an IA complaint he filed against multiple NJSP officers. The Custodian timely responded denying access to the subject OPRA request on the basis that IA records were not disclosable under OPRA per Gannett, 467 N.J. Super. 385. This complaint ensued, wherein the Complainant disputed the denial arguing that Gannett and his designation as a victim entitled him to obtain the records sought. In the SOI, the Custodian maintained her position that the IA records requested were exempt from disclosure under OPRA.

Prevailing Court case law and the GRC's prior decisions support the Custodian's denial. See O'Shea, 410 N.J. Super. at 382; Rivera, 250 N.J. at 142-143; Gannett, 467 N.J. Super. 385; Camarata, GRC 2014-127. Specifically, both the Court and Council have held that records related to IA investigations were exempt from disclosure under the IAPP. N.J.S.A. 47:1A-9. Thus, it follows that the records sought, which were part of an internal affairs investigation that resulted in "corrective action" per a March 8, 2021 final disposition letter to the Complainant and attached to the SOI, are exempt from disclosure. Wares, GRC 2014-330.

Therefore, the Custodian lawfully denied access to the Complainant's June 6, 2021 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant sought internal affairs records, which are explicitly deemed confidential pursuant to the IAPP and not subject to access under OPRA. See Gannett, 467 N.J. Super. 385; Wares, GRC 2014-330.

In closing, the GRC briefly notes that the Complainant's argument that Brady and Giglio, cited in AG Directive 2019-6, is in error because those decisions only apply to prosecutors withholding exculpatory evidence during a criminal trial. Neither decision is applicable to the instant complaint because the GRC does not engage in criminal prosecutions. N.J.S.A. 47:1A-7. Thus, those decisions do not provide counter-precedent to overturn years of GRC and Court precedent governing the disclosability of IA records under OPRA. Further, that the Complainant may be a potential victim in the separate matter is of no moment here: OPRA's exception allowing victims of a crime to access records regarding their victimization does not expressly identify IA records as part of that universe of disclosable records. N.J.S.A. 47:1A-1.1. Additionally, the Complainant makes no compelling argument here that the IA investigation resulted in criminal charges against the subjects. Instead, the March 8, 2021 final disposition letter in Internal Investigation No. 2020-0148 indicated that only one accusation was upheld and resulted in "corrective action."

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. 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).

2. The Custodian lawfully denied access to the Complainant's June 6, 2021 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant sought internal affairs records, which are explicitly deemed confidential pursuant to the Attorney General's Internal Affairs Policies and Procedures and not subject to access under OPRA. See Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021); Wares v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-330 (June 2015).

Prepared By: Frank F. Caruso  
Executive Director

June 21, 2022