



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 29, 2022 Government Records Council Meeting

Shaquille Crawley
Complainant

Complaint No. 2021-175

v.

County of Burlington
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council (“Council”) considered the September 22, 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 requests 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 29th Day of September 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: October 6, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2022 Council Meeting**

**Shaquille Crawley¹
Complainant**

GRC Complaint No. 2021-175

v.

**County of Burlington²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of: Video of holding housing unit for the whole day of 10/27/20 and body cam footage of Sgt. M. Peer on 10/28/20. Body cam footage of Sgt. Crankshay the whole day of 10/27/20 and 10/28/20. And video of radical unit directly across from center control from 10/27/20 to 10/28/20.

Custodian of Record: Ashley Godfrey

Request Received by Custodian: February 15, 2021; March 17, 2021; March 24, 2021

Response Made by Custodian: March 8, 2021; March 18, 2021; April 6, 2021

GRC Complaint Received: August 2, 2021

Background³

Request and Response:

On February 15, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 8, 2021, the Custodian responded in writing stating that no responsive records exist. The Custodian also stated that the requested videos were past the retention period.

On March 17, 2021, the Complainant requested the above-mentioned records again. On March 18, 2021, the Custodian responded in writing stating that no responsive records exist. The Custodian also stated that the retention period for Body Worn Camera (“BWC”) footage was ninety (90) days and forty-five (45) days for video recordings inside the Burlington County Jail (“Jail”). On March 24, 2021, the Complainant requested the above-mentioned records a third time. On April 6, 2021, the Custodian responded in writing stating that no responsive records exist.

¹ No legal representation listed on record.

² Represented by Brian E. Turner, Esq., of Malamut & Associates, LLC (Cherry Hill, NJ).

³ 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 August 2, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he believed the retention schedule for the requested videos was six (6) months. The Complainant thus argued that he submitted his request well within the retention period. The Complainant further asserted that the requested footage depicted an alleged incident occurring at the Jail.

Statement of Information:

On September 27, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 15, 2021. The Custodian certified that on February 25, 2021, she contacted Warden Matthew Leith and Captain Teechey Blango to locate responsive records. The Custodian certified that Captain Blango informed her that same day that no responsive records exist. The Custodian certified that she responded in writing on March 8, 2021, stating that no responsive records exist.

The Custodian contended when she received the Complainant’s second OPRA request seeking the same records, she e-mailed Captain Blango and Warden Leith to confirm the retention period. The Custodian asserted that she notified the Complainant on March 18, 2021, stating that the retention period for BWCs was only ninety (90) days and only forty-five (45) days for video footage inside the Jail. The Custodian also asserted that upon receiving the Complainant’s third OPRA request, she confirmed with Captain Blango again that no responsive records exist, and responded to the Complainant on April 6, 2021.

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 State’s 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 first OPRA request on February 15, 2021, seeking BWC and Jail footage pertaining to an alleged incident occurring on or between October 27 and 28, 2020. In response, the Custodian stated that no responsive records exist. The Custodian thereafter responded in subsequent requests and later certified in the SOI that the retention period for BWC footage was ninety (90) days, and forty-five (45) days for footage inside the Jail. Thus, the requested Jail and BWC footage would have been subject to deletion on December 11, 2020, and January 25, 2021, respectively, several weeks prior to the initial 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 requests 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 requests 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

September 22, 2022