



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**November 9, 2022 Government Records Council Meeting**

Antwine Jabar Rivera  
Complainant

Complaint No. 2021-224

v.

Millville Police Department (Cumberland)  
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council (“Council”) considered the October 27, 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 records sought in the Complainant’s OPRA request are exempt from disclosure under OPRA and the Internal Affairs Policies and Procedures. N.J.S.A. 47:1A-10; Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

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 9<sup>th</sup> Day of November 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: November 15, 2022**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 9, 2022 Council Meeting**

**Antwine Jabar Rivera<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-224**

v.

**Millville Police Department (Cumberland)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies via U.S. mail of: “any and all complaint of any kind filed against Ex. Det. Bruce Cornish. Together with any reports and disciplinary proceeding against Ex. Det. Bruce Cornish. Please include all Preliminary Notices of Disciplinary Actions.”

**Custodian of Record:** Jeanne Parkinson  
**Request Received by Custodian:** September 1, 2021  
**Response Made by Custodian:** September 7, 2021  
**GRC Complaint Received:** September 23, 2021

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

**Request and Response:**

On August 26, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. September 7, 2021, the Custodian responded in writing, denying access under OPRA’s personnel records exemption. N.J.S.A. 47:1A-10.

**Denial of Access Complaint:**

On September 23, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he did not request any “personal” or pension records. The Complainant argued that the information requested was public information, and the Attorney General’s Internal Affairs Policy and Procedures (“IAPP”) supported his argument.

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

<sup>2</sup> Represented by Brock D. Russell, Esq., of the Law Office of Brock D. Russell (Millville, 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.

Statement of Information:<sup>4</sup>

On December 6, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified she received the Complainant’s OPRA request on September 1, 2021. The Custodian certified her search included forwarding the request to the Millville Police Department (“MPD”). The Custodian certified that MPD informed her that all disciplinary actions because of an incident are personnel records not subject to OPRA. The Custodian certified she responded in writing on September 7, 2021, denying access.

The Custodian cited the IAPP to argue that the requested records were exempt from disclosure under OPRA.

**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.

OPRA also provides that:

Notwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access . . .

[N.J.S.A. 47:1A-10.]

OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 594 (2011). These are:

[A]n individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record;

[P]ersonnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

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<sup>4</sup> On October 6, 2021, this complaint was referred to mediation. On November 15, 2021, this complaint was referred back to the GRC for adjudication.

[D]ata contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

[Id.]

The Council has addressed whether personnel records not specifically identified in OPRA were subject to disclosure. For instance, the Council has determined that records involving employee discipline or investigations into employee misconduct are properly classified as personnel records exempt from disclosure under N.J.S.A. 47:1A-10. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004), the Council found that records of complaints or internal reprimands against a municipal police officer were properly classified as personnel records encompassed within the provisions of N.J.S.A. 47:1A-10. For this reason, the Council concluded that “. . . records of complaints filed against [the police officer] and/or reprimands [the officer] received are not subject to public access.” Id.; See also Wares v. Twp. of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015).

Additionally, the Appellate Division has held that Attorney General Guidelines have the force of law for police entities. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). 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 states “[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 (December 2021). Consistent with the IAPP, the Council held in Wares v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 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 Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. 124 (2022) (holding that internal affairs reports are exempt from disclosure under OPRA); Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015), Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010).

Here, the Complainant’s OPRA request sought access to “[a]ny and all complaint of any kind . . . together with any reports and disciplinary proceeding against Ex. Det. Bruce Cornish . . . includ[ing] all preliminary notices of disciplinary actions.” The Custodian responded in writing denying access to the subject OPRA request under N.J.S.A. 47:1A-10. The Complainant subsequently filed this complaint alleging the requested records were public information and that the IAPP supported his argument. In the SOI, the Custodian maintained the records were exempt from disclosure.

Upon review of the facts here and all available case law, the GRC agrees that a lawful denial of access occurred. Specifically, the GRC have long held that the records sought were exempt under both N.J.S.A. 47:1A-10 and the IAPP, contrary to the Complainant’s assertion. See Merino, GRC 2003-110. Additionally, the Supreme Court very recently reaffirmed the forgoing

conclusion in Rivera, 250 N.J. 124.<sup>5</sup> For these reasons, the GRC is satisfied that the Custodian lawfully denied access to the subject OPRA request.

Accordingly, the records sought in the Complainant's OPRA request are exempt from disclosure under OPRA and the IAPP. N.J.S.A. 47:1A-10; Rivera, 250 N.J. 124; Merino, GRC 2003-110. Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the records sought in the Complainant's OPRA request are exempt from disclosure under OPRA and the Internal Affairs Policies and Procedures. N.J.S.A. 47:1A-10; Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado  
Staff Attorney

October 27, 2022

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<sup>5</sup> The GRC notes that the Court also held that the records at issue there could be disclosed under the "common law" right of access but was clear that same were not disclosable under OPRA. To this end, the GRC is compelled to note that it has no authority over the common law right of access and thus no ability to determine whether responsive records should have been disclosed thereunder. N.J.S.A. 47:1A-7(b); see also Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).