



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

KIMBERLY K. HOLMES
Acting Commissioner

FINAL DECISION

August 29, 2023 Government Records Council Meeting

Fred Thomas
Complainant

Complaint No. 2021-275

v.

County of Burlington
Custodian of Record

At the August 29, 2023 public meeting, the Government Records Council (“Council”) considered the August 22, 2023 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 has borne her burden of proof that she lawfully denied access in whole and in part to the Complainant’s February 25, 2021 request seeking audio and video footage from an officer’s body worn camera, as well as footage from other locations within the jail. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA’s exemptions to protect security and surveillance information and techniques. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 175-76 (2016).

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 August 2023

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 5, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 29, 2023 Council Meeting**

**Fred Thomas¹
Complainant**

GRC Complaint No. 2021-275

v.

**County of Burlington²
Custodial Agency**

Records Relevant to Complaint: “[B]ody cam footage of S.G.T. M (sic) Peer for whole day (sic) of 2-9-2021 and 2-14-2021 and 2-15-21, [p]lus video of burlington county medical (sic) the whole day of 2/14/21 and 2-15-2021, [p]lus inside of center control audio and video on 2-14-2021 and 2-15-2021, [p]lus footage of the medical cell, (sic) that I was in from 2-9-2021 to 2-15-2021”³

Custodian of Record: Ashley Godfrey

Request Received by Custodian: February 25, 2021

Responses Made by Custodian: March 8, 2021, March 29, 2021 and April 22, 2021

GRC Complaint Received: November 8, 2021

Background⁴

Request and Responses:

On February 21, 2021, the Complainant submitted a request to the Custodian seeking the above-mentioned records. The Complainant’s request was received by the Custodian on February 25, 2021.⁵ On March 8, 2021, the seventh (7th) business day following receipt of said request, the Custodian responded in writing, designating it as “OPRA Request 0314-21” and informing the Complainant that he needed to clarify the request by providing a specific time of day.

On March 9, 2021, the Complainant submitted a letter to the Custodian stating that the letter was “my second time requesting this information.” The Complainant asked for body worn camera (“BWC”) footage from Sgt. Peer for February 9, 2021. The Complainant also stated that

¹ No legal representation listed on record.

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

³ The Complainant did not specify the preferred method of delivery.

⁴ 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.

⁵ The Complainant did not submit an Open Public Records Act (“OPRA”) request. The Complainant submitted a non-form request that did not invoke OPRA. The Custodian, however, treated the request as an OPRA request and assigned it an “OPRA request” agency identifier.

he “need[ed] video of Medical/Clinic (sic) for the entire day of 2-13-2021 and the entire day of 2-14-2021.”

On March 16, 2021, the Complainant submitted a letter purporting to clarify the request. The Complainant stated that he is seeking BWC footage from Sgt. Peer on February 9, 2021 between 10:00 a.m. and 6:00 p.m., and February 13 and 14, 2021 between 6:00 a.m. and 6:00 p.m. The Complainant stated he is also seeking “video audio of medical” for February 13, 2021 and February 14, 2021 between 6:00 a.m. and 6:00 p.m. The Complainant stated he is further seeking video and audio inside of the center control on February 13, 2021 and February 14, 2021 between 6:00 a.m. and 6:00 p.m.⁶ The Complainant further stated, “ashley . . . where did you get 2-15-21 from? funny ☺ [.]”

On March 29, 2021, the Custodian responded to the Complainant’s request, designating it as “OPRA Request 0314-21 & 0466-21.” The Custodian informed the Complainant that the agency was processing his request and would require an extension of time until April 23, 2021.⁷

On April 22, 2021, the Custodian responded to the Complainant’s request, informing him that she enclosed a diskette “containing videos responsive to your request.” The Custodian further informed the Complainant that BWC footage was located responsive to the request; however, the footage was withheld from disclosure because it contained “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein and security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software pursuant to N.J.S.A. 47:1A-1.1.” The Custodian also informed the Complainant that the request is “impermissibly overbroad, lacks specificity and/or is not limited as to time.” For this reason, the Custodian informed the Complainant that the remaining items of the request were denied. The Custodian cited MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) in partial support of the denial.

Denial of Access Complaint:

On November 8, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he filed his request on or about February 18, 2021. The Complainant stated that on March 8, 2021, the Custodian responded to his request but made a mistake when listing the dates for which the Complainant was seeking BWC records. The Complainant stated that the Custodian listed the dates as February 9, 2021, February 14, 2021 and February 15, 2021; however, the correct dates were February 9, 2021, February 13, 2021 and February 14, 2021.

The Complainant stated that on March 29, 2021, the Custodian again responded to his request and failed to list the February 13, 2021 date as one of the dates for which he requested the

⁶ To the extent the Complainant added the date of February 13, 2021 in clarification of his request, he altered rather than clarified the request.

⁷ The GRC notes that, although the Custodian added a second request identifier to the response, the only request at issue in this complaint is the Complainant’s February 25, 2021 request, marked with agency identifier 0314-21.

records. The Complainant stated that the Custodian also listed a February 15, 2021 date, and that he did not know where the Custodian obtained that date.

The Complainant stated that on April 22, 2021, the Custodian forwarded to him a diskette containing records in redacted form for February 9, 2021, February 14, 2021 and February 15, 2021. The Complainant stated that the Custodian repeatedly asserted that he sought records for February 15, 2021, when he instead sought records for February 13, 2021.⁸

Statement of Information:

On November 29, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 25, 2021. The Custodian certified that, upon receipt of the request, she contacted Deputy Warden Blango to locate records responsive to the request. The Custodian certified that clarification of the request was necessary, and on March 8, 2021, she responded to the Complainant seeking said clarification. The Custodian certified that on March 18, 2021, she received a letter from the Complainant in reply to her request for clarification of the February 25, 2021 request. The Custodian certified that in his reply the Complainant requested “new information,” and she then opened another OPRA matter under agency identifier 0466-21.

The Custodian certified that on March 29, 2021, she notified the Complainant that an extension of time was required until April 23, 2021, to further respond to his request. The Custodian certified that on April 23, 2021, she responded to the Complainant’s February 25, 2021 request by forwarding to him a diskette containing videos responsive to his request.⁹ The Custodian certified that some of the records were redacted pursuant to N.J.S.A. 47:1A-1.1 to protect the emergency and/or security information and procedures of the facility and because some portions of the request were overly broad.

The Custodian certified that the records sought by the Complainant contain the walking duties of officers within the jail. The Custodian certified that such records reveal how and when manual doors are opened, the timing of electronic release doors, and where keys are held. The Custodian certified that such records were redacted because disclosing the records would jeopardize the security of the building and those inside the facility. The Custodian certified that denial of such records is proper under N.J.S.A. 47:1A-1.1.¹⁰

⁸ The Complainant stated that on May 24, 2021, the Custodian again responded to his request; however, the May 24th response was for a different request (agency identifier 0776-21) which did not form the basis of this complaint.

⁹ The response letter is dated April 22, 2021.

¹⁰ In the SOI the Custodian also addressed two (2) other requests submitted by the Complainant which were assigned agency identifiers 0466-21 and 0776-21. These requests are not relevant to this adjudication because they did not form the basis of this complaint.

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 further exempts disclosure of records that contain “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1 OPRA further exempts access to “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.” Id.

The gravamen of the complaint is that the Custodian failed to respond to the Complainant’s request for records on February 13, 2021. The Complainant asserted that, instead of responding to the correct date of February 13, 2021, the Custodian responded to an incorrect date of February 15, 2021. The Complainant questioned how the Custodian arrived at the February 15, 2021 date. The GRC found that the Custodian determined the Complainant was seeking records for February 15, 2021, among other dates, because the Complainant listed the February 15, 2021 date *repeatedly* in his request. The Complainant did not ask for records for the February 13, 2021 date until he submitted letters to the Custodian dated March 9, 2021 and March 16, 2021.¹¹

Regardless of the dates for which the Complainant is seeking the requested records, with respect to correctional facilities the Council has always been heedful of the agency’s concern to safeguard records that could accidentally or intentionally reveal sensitive facility operations and procedures. In Fischer v. N.J. Dep’t of Corr., GRC Complaint No. 2005-171 (February 2006), the Council determined that where the complainant sought access to policies and post orders for a section of East Jersey State Prison, the custodian properly denied access pursuant to N.J.S.A. 47:1A-1.1 because the evidence of record revealed “. . . that the requested information contains procedures for emergencies [and] where officers . . . are located . . .” The Council further held that disclosure of staff schedules could pose a significant risk to the safe and secure operation of a correctional institution because, for example, “an inmate seeking to conduct criminal actions, disruptive behavior, or contraband-related offenses would be given an advantage by having intimate knowledge of the daily assignment of personnel . . .” Durham v. N.J. Dep’t of Corr., GRC Complaint No. 2012-35 (March 2013).

Regarding the disclosure of security camera footage, the New Jersey Supreme Court in Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016) 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 [N.J.S.A. 47:1A-1.1] exemptions can be relied on to bar,

¹¹ The Complainant did seek footage of the medical cell that he was confined in from February 9, 2021 until February 15, 2021, which would encompass the February 13, 2021 date; however, he did not specifically mention the medical cell footage in his letters dated March 9, 2021 and March 16, 2021.

categorically, under OPRA, a security system's otherwise confidential surveillance product.” Id. at 175-76.

Here, the Complainant sought audio and video footage from an officer’s BWC, as well as other locations within the jail facility. The Custodian certified that she disclosed to the Complainant a diskette containing certain responsive videos in redacted form; however, other requested footage was denied. The Custodian certified that the records were denied under N.J.S.A. 47:1A-1.1 as records, that if disclosed, would jeopardize security of the building or facility or persons therein, because the records reveal the duties of officers within the jail, how and when manual doors are opened, the timing of electronic release doors, and where keys are held.

As such, the Custodian has borne her burden of proof that she lawfully denied access in whole and in part to the Complainant’s February 25, 2021 request seeking audio and video footage from an officer’s BWC, as well as footage from other locations within the jail. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA’s exemptions to protect security and surveillance information and techniques. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. at 175-76.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access in whole and in part to the Complainant’s February 25, 2021 request seeking audio and video footage from an officer’s body worn camera, as well as footage from other locations within the jail. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA’s exemptions to protect security and surveillance information and techniques. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 175-76 (2016).

Prepared By: John E. Stewart

August 22, 2023