



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**January 25, 2022 Government Records Council Meeting**

Raymond C. Mitchell  
Complainant

Complaint No. 2021-40

v.

Town of Secaucus (Hudson)  
Custodian of Record

At the January 25, 2022 public meeting, the Government Records Council (“Council”) considered the January 18, 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 because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. 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 25<sup>th</sup> Day of January 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: January 27, 2022**

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**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 25, 2022 Council Meeting**

**Raymond C. Mitchell<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-40**

**v.**

**Town of Secaucus (Hudson)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

November 23, 2020 OPRA request: Copies via pickup of footage from “Huber St/Patersn Plan and Maple St and Patersn Plank Road and Huber School cameras.”

November 24, 2020 OPRA request: Copies via pickup of footage from “[s]treet cameras on 11-23-20 between Meadowlands Parkway and Wood Ave between” 4:00 pm and 4:30 pm.

**Custodian of Record:** Michael Marra

**Request Received by Custodian:** November 23, 2020; November 24, 2020

**Response Made by Custodian:** December 22, 2020

**GRC Complaint Received:** February 10, 2021

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

**Request and Response:**

On November 23, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 24, 2020, the Complainant submitted a second (2<sup>nd</sup>) OPRA request to the Custodian seeking the above-mentioned records.

On December 22, 2020, the eighteenth (18<sup>th</sup>) and seventeenth (17<sup>th</sup>) business days after receipt of the each OPRA request respectively, the Custodian responded in writing stating that the Town of Secaucus (“Town”) did not maintain any responsive records.

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

<sup>2</sup> Represented by Kirstin Bohn, Esq., of Chasan, Lamparello, Mallon & Cappuzzo, P.C. (Secaucus, 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.

### Denial of Access Complaint:

On February 10, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant failed to provide any argument or support for why he believed he was unlawfully denied access to the records other than highlighting the date on the Custodian’s response letter.

### Statement of Information:

On March 25, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA requests on November 23, and 24, 2020 respectively. The Custodian certified that his search involved contacting the Secaucus Police Department (“SPD”) to determine whether any responsive records existed. The Custodian certified that upon being advised that no records existed, he responded in writing to both OPRA requests on December 22, 2020 advising the Complainant of such.

The Custodian first argued that this complaint should be dismissed because the Complainant failed to state a claim. The Custodian stated that the Complainant only attached to the complaint his two (2) OPRA requests, the response, and a letter from a third party.<sup>4</sup> The Custodian argued that the Complainant did not provide any commentary on the merits of his complaint, thereby requiring the Town to “conceive potential claims in order to” provide a defense.

The Custodian next argued that, to the extent the highlighted date on December 22, 2020 response letter amounted to a dispute over the response time, no “deemed” denial occurred here. The Custodian stated that in March 2020, the Legislature amended OPRA to remove the response time frame requirement due to the COVID-19 public health emergency. N.J.S.A. 47:1A-5(i)(2). The Custodian argued that the eighteen (18) business days, given the pandemic and the concurrent Thanksgiving holiday close to the OPRA request submission dates, was reasonable. The Custodian argued that this is especially true given the invalid nature of the November 23, 2020 OPRA request, which likely would have required clarification.

The Custodian finally argued that no unlawful denial of access occurred because no records existed. The Custodian thus contended that even if the GRC determined that a timeliness violation occurred, the Town could not provide records it never maintained. The Custodian also argued that he had no obligation to direct the Complainant to the proper agency, which appears to be the New Jersey Sports and Exposition Authority based on the third-party letter. The Custodian noted that OPRA only requires internal employees to follow N.J.S.A. 47:1A-5(h) and does not require an agency to perform this action for a separate entity.

### Analysis

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a

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<sup>4</sup> That letter, from Records Coordinator Cathy Vonk for the New Jersey Sports and Exposition Authority, stated that videos were automatically purged after fourteen (14) days.

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.

A Denial of Access Complaint is not actionable when a complainant fails to provide any factual or legal basis alleging an unlawful denial of access to government records. In Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014), the complainant’s denial of access complaint lacked any arguments or legal precedent in support of his complaint. The Council found that the custodian did not unlawfully deny access to the OPRA request, in part, because the complainant failed to advance any argument in support of his claim. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014).

Here, the Complainant filed his complaint attaching the OPRA requests at issue along with Custodian’s response and a separate third-party letter. However, the Complainant did not include any arguments that could reasonably be considered a claim. Furthermore, the Complainant does not argue, or even attempt to explain why he disagreed with the Custodian’s December 22, 2020 denial. Thus, the Complainant failed to advance any argument in support of his claim for an unlawful denial of access to records and this complaint should be dismissed accordingly.<sup>5</sup> See Loigman, GRC 2013-242.

Accordingly, because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman, GRC 2013-242; Inzelbuch, GRC 2013-20; Collazo, GRC 2013-310. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

January 18, 2022

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<sup>5</sup> The GRC notes that notwithstanding the Complainant’s failure to state a claim here, the evidence of record does support that the Town did not maintain any records responsive to either of the subject OPRA requests. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).