



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 30, 2023 Government Records Council Meeting

Mary Ann Moretti
Complainant

Complaint No. 2021-68

v.

Lafayette Township Elementary School (Sussex)
Custodian of Record

At the May 30, 2023 public meeting, the Government Records Council (“Council”) considered the May 23, 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 requested security camera videos are exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016). Thus, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6. See also Scutro v. Cnty. of Union, GRC Complaint Nos. 2016-315 & 2016-316 Street v. N. Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 & 2017-104 (June 2019), Schulze v. Monmouth Cnty. Sheriff’s Office, GRC Complaint No. 2018-108 (April 2020), and Antonucci v. City of Long Branch (Monmouth), GRC Complaint No. 2020-207 (Interim Order May 31, 2022). As such, the Council declines to address the other defenses raised by the Custodian.

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 30th Day of May 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: June 6, 2023

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 30, 2023 Council Meeting**

**Mary Ann Moretti¹
Complainant**

GRC Complaint No. 2021-68

v.

**Lafayette Township Elementary School (Sussex)²
Custodial Agency**

Records Relevant to Complaint: Copies via first class mail of:

1. “[G]ym videos pertaining to my child: January 6,7,8,9,10,13,14,15,16,17[,], 21,22,23,24,27 in the year 2020[.]”
2. “[C]lassroom videos if available: January 10,13,14,15,16,17, 21,22 in the year 2020[.]”
3. “[H]allway video: January 15,16, 21 year 2020 outside my son’s classroom[.]”

Custodian of Record: Erin Siipola

Request Received by Custodian: February 15, 2021

Response Made by Custodian: February 24, 2021

GRC Complaint Received: March 30, 2021

Background³

Request and Response:

On (Sunday) February 14, 2021, a Sunday, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 24, 2021, the seventh (7th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the records responsive to the request are denied for building safety and security reasons. The Custodian also denied the records under Family Educational Rights and Privacy Act of 1974 (“FERPA”), the N.J. code, and student privacy concerns. The Custodian further denied request item number 2 as vague and overly broad because no particular classroom is specified in the request.⁴

¹ No legal representation listed on record.

² Represented by Marc H. Zitomer, Esq., of Schenck, Price, Smith & King, LLP (Florham Park, 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.

⁴ Although the Complainant objected to the Custodian’s response because it was not provided on the official OPRA request form, the Custodian informed the Complainant that she responded to the request. Thereafter, on March 11, 2021, the Complainant filed another OPRA request for the same records and asked that the response be made on the official OPRA form; however, the March 11, 2021 request did not form the basis of this complaint.

Denial of Access Complaint:

On March 30, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on February 14, 2021, she requested the records relevant to the complaint, and on February 24, 2021, the Custodian responded to her request.

The Complainant stated that she is the custodial parent of a student who is the victim of harassment, intimidation, and bullying as described in N.J.S.A. 18A:37-13 et seq. The Complainant stated that she is entitled to the requested records under FERPA, which provides that the school provide a parent with a copy of the requested student records or make other arrangements for the inspection of the records.

The Complainant stated that she has “no ‘ill’ intention with the copies of the videos.” The Complainant stated that she has regular access to the school property, including the classrooms and all portions of the building. The Complainant further stated that she has been present at school functions, including field trips, parties, and special events; therefore, she knows all of the students and all students know her. As such, the Complainant stated that “[t]he privacy issue is moot.” The Complainant stated that to ensure more privacy she has offered the Custodian money to obtain software to blur the faces of students captured on the requested videos.

The Complainant stated that she is knowledgeable about security and security procedures. The Complainant stated that she knows where the security cameras are mounted. The Complainant stated that the majority of the videos she requested are within the all-purpose gym which is an area with public access during events. The Complainant stated that, “[m]y own child attends the school, releasing or using these videos for any other purpose . . . other than what I have been clearly asking for in . . . this request, is putting MY OWN child at risk.” (Emphasis in original.) The Complainant concluded by stating that the security issue is moot.

Supplemental Submission:

On April 16, 2021, the Complainant e-mailed the GRC to ask if there were rules or procedures governing the GRC. On the same date, the GRC by reply e-mail provided the Complainant with a link to the GRC’s website. The GRC informed the Complainant that the GRC’s regulations were accessible on the website.

Statement of Information:

On April 23, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 15, 2021, and responded on February 24, 2021, which was the seventh (7th) business day following her receipt of the request.

The Custodian certified that the records responsive to the request consist of fifteen (15) days of security videos from the school gym, and three (3) days of security videos from the school hallway outside the classroom of the Complainant’s child. The Custodian certified that N.J.S.A. 47:1A-1.1 states in pertinent part that a government record shall not include the following which

is deemed confidential: “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.” The Custodian also quoted OPRA as containing an exemption for “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software.”

The Custodian certified that all three of the Complainant’s request items seek videos from the school security system located inside a school building. The Custodian certified that the New Jersey Supreme Court and the GRC have both held that such records are explicitly exempt from access. The Custodian cited Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016), and the GRC’s decisions in Scutro v. Cnty. of Union, GRC Complaint Nos. 2016-315 and 2016-316 (February 2019) and Street v. N. Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 & 2017-104 (June 2019).

The Custodian certified that the requested videos would disclose the coverage area that the school’s security cameras cover, as well as potential vulnerabilities regarding the movement patterns of students and school personnel. Further, the Custodian certified the requested records contain “numerous hours of footage of other students, conversations regarding students, student movement . . .” The Custodian certified that, despite the Complainant’s assertions that she has been provided with unfettered access to the school building, no one from the district has ever apprised the Complainant of the district’s security system capabilities. The Custodian certified that access to a record of the security video would reveal viewable areas of the security cameras, which could reveal blind spots and areas of obstruction.

The Custodian further certified that she did in fact allow the Complainant access to some of the requested records. The Custodian certified that the Complainant was permitted to view the gym videos on February 26, 2020, February 27, 2020, and March 9, 2020. The Custodian certified that, while the Complainant was allowed to view the videos, the Custodian would not provide the Complainant with copies of the videos, because to do so would pose serious security concerns.

The Custodian certified that, in addition to her denial of the videos as emergency and security records under N.J.S.A. 47:1A-1.1 and Gilleran, they are also exempt because they identify other students, and therefore constitute student records. The Custodian certified that as student records, the videos are not subject to disclosure pursuant to N.J.A.C. 6A:32-2.1 and N.J.S.A. 18A:36-19. Finally, the Custodian certified that the Complainant’s request for the records is overly broad to the extent that the request seeks “copies of classroom videos if available.” The Custodian certified that there are many classrooms in the school with numerous classes held in each room throughout the course of the school day. The Custodian certified that the Complainant’s request for “copies of hallway videos outside my son’s classroom” would result in hours of general hallway footage from inside the school. As such, the request is also overly broad. The Custodian further certified that the Complainant’s request for “gym videos pertaining to my child” would require her to conduct research, which is not required under OPRA. The Custodian cited MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 at 546 (App. Div. 2005) in support of her denial of the records in response to an overly broad request.

The Custodian certified that she declines to address the Complainant's arguments regarding her rights under FERPA because the GRC does not have jurisdiction to determine what constitutes a FERPA violation. The Complainant cited Pusterhofer v. Shrewsbury Bd. Of Educ., GRC Complaint No. 2004-188 (April 2005). However, the Custodian certified that the Complainant had previously filed complaints with the U.S. Department of Education alleging FERPA violations, and the U.S. Department of Education determined that the school district was not required by FERPA to provide copies of the videos since it would satisfy its FERPA obligation by permitting the Complainant to view the videos.

Additional Submissions:

On April 26, 2021, the Complainant asked if she could reply to the Custodian's SOI. On the same date, the GRC informed the Complainant that she could submit a reply to the SOI; however, the GRC asked the Complainant to "make sure the reply is (1) brief and (2) only addresses any new issues raised by the Custodian."

On May 10, 2021, the Complainant submitted a reply to the SOI, which consists of eleven (11) pages together with twenty (20) additional attached pages of exhibits. The Complainant asserted that the Custodian relied on two provisions within N.J.S.A. 47:1A-1.1 to deny her access to the requested records: (1) "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;" (2) "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property." The Complainant stated that neither of those provisions has a "blanket rule" that applies to an entire category of information. The Complainant stated that the Legislature did not exempt all emergency and security information, just such information that would "jeopardize security" or "would create a risk" to safety. The Complainant stated that, as such, OPRA does not exempt from disclosure all footage that comes from a surveillance camera. The Complainant asserted that exempting all of the video footage is not consistent with N.J.S.A. 47:1A-1, which provides that "any limitation on the right of access . . . shall be construed in favor of the public's right of access."

The Complainant argued that the general language of the Custodian's answers does not establish that the safety of any individuals would be jeopardized by the release of the videos to a parent. The Complainant stated that there is "no 'security information or procedure to be gained or gleaned' from the portions of video [the Complainant is] requesting."

The Complainant further stated that N.J.S.A. 47:1A-5(g) provides for the deletion or excision of portions of a record and access to the remainder. The Complainant argued that the Custodian "could review the surveillance tape and redact parts that, in fact, 'would create a risk to the safety of persons' or 'would jeopardize security.' N.J.S.A. 47:1A-1.1[.]" The Complainant stated, however, that the Custodian failed to provide any real support of how safety would be jeopardized.

The Complainant also stated that N.J.S.A. 47:1A-5(c) and N.J.S.A. 47:1A-5(d) provide that if an extraordinary expenditure of time and effort was needed to accommodate her request the Custodian could have charged a reasonable special service charge. However, the Complainant

stated that there was no negotiation on the part of the Custodian despite the Complainant's previous offer to pay any service charge related to the request.

The Complainant stated that the Legislature drafted two prongs in N.J.S.A. 47:1A-1.1 that must be satisfied, (1) the material sought must relate to "emergency or security information" or "security measures and surveillance techniques;" and (2) the agency must show that disclosure "would jeopardize security" or "would create a risk to" safety. The Complainant argued that unless both prongs are met the exemption cannot apply. The Complainant argued, however, that the records sought have "nothing to do with nor relates in way (sic) to 'emergency or security information or procedures.'" As such, the Complainant argued, the Custodian has not met her burden of proof that disclosure of the records would jeopardize security or create a safety risk.

The Complainant stated that she also disagrees with the Custodian's characterization of her request as set forth in Item 9 of the SOI. The Complainant asserted that she is not seeking security information for a building, but rather videos of her child during an incident on school grounds.

The Complainant next stated that she does "concede upon review of the brief OPRA form that [the request] appears to be a broad, vague, and excessive request to those not knowledgeable about the case . . ." The Complainant asserted, however, that the Custodian knows from previous requests and a pending case exactly what portions of the video she is requesting.⁵

The Complainant asserted that although the Custodian "argues that the security footage would reveal what is captured, how often, and how well it is captured," she already knows this information, having been given access to view the videos. Moreover, the Complainant asserted that the school publicly displays the camera views in the school office "accessible by parents, vendors and other outsiders." The Complainant stated that "there is literally a 'wall' of camera footage clearly displaying the cameras, what they capture, how clear, what angle, and [other] characteristics." The Complainant argued that the displayed images compromise security more so than the short portions of the videos she requested.

The Complainant argued that Street, GRC 2017-103 & 2017-104, does not apply to the instant complaint because in Street, the complainant was seeking video of a lockdown drill, which does relate to security procedures; however, she is not seeking lockdown drill video. The Complainant also asserted that Gilleran, 227 N.J. 159 does not apply here because there, the township was seeking to protect information about the camera itself, including the scope of the area, as well as the clarity and frequency of images captured, and OPRA's security exemptions bar access to a security system's surveillance product. The Complainant stated that she already knows such information from the access already provided to her, as well as viewing the camera screens in the school office for five years.

The Complainant further argued that, although the Custodian certified it would take an enormous amount of time to review the videos, the Custodian in a pending case stated that one hour of time was sufficient to review the videos. The Complainant references documentation in

⁵ It appears that the referenced "pending case" is a matter where the Complainant was seeking disclosure of the same videos under FERPA.

her attached Exhibit A and stated that one to two hours does not qualify as an enormous amount of time.⁶

Finally, the Complainant asks the GRC to take note of a decision by the New Jersey Department of Education regarding FERPA. The Complainant asks the GRC to see “attached documents and proofs” of her FERPA complaints in her attached Exhibit B.

On March 29, 2022, the Complainant e-mailed the GRC to ask if she could submit any new information to her complaint. The Complainant also asked the GRC if there was a website where she could read rules that govern GRC procedures.

On March 29, 2022, the GRC replied to the Complainant’s e-mail. The GRC informed the Complainant that she had previously asked the GRC questions regarding the status of her complaint in terms of the estimated time for adjudication, along with general procedural questions.⁷ The GRC further informed the Complainant that she was now asking substantive questions, and that she would have to copy the other parties with such communications. The GRC informed the Complainant that she could not supplement her complaint, and that she was out of time to amend her complaint “as a matter of right.” The GRC further informed the Complainant that amending her complaint at the present time would require approval from the Executive Director. Finally, although the GRC on April 16, 2021, provided the Complainant with a link to the GRC’s website where she could access the GRC’s regulations, the GRC on this date provided her with a link *directly* to the GRC’s regulations.

On May 10, 2022, the Complainant submitted an e-mail to the GRC with an attached “Supplement to Complaint No. 2021-68 with Exhibits.”⁸

On May 18, 2022, the Complainant e-mailed the GRC asking the GRC to confirm receipt of her previously submitted supplement to the complaint. On the same date, the GRC informed the Complainant that, although the GRC was confirming receipt of her supplement to the complaint, the GRC would not consider the submission because on March 29, 2022, the GRC informed the

⁶ The Complainant’s Exhibit A is an e-mail dated March 19, 2020, from the school superintendent to Mr. Moretti in reply to his e-mail sent that same date seeking to view the security videos that his wife, the Complainant, had previously viewed. The superintendent informed Mr. Moretti that she would be willing to set aside no more than one hour for him to view the videos. In that same e-mail, however, the superintendent informed Mr. Moretti that she had already “. . . spent five hours with your wife reviewing the video footage.”

⁷ On March 21, 2022, the Complainant repeatedly e-mailed the GRC asking questions about the status of her complaint. Although the GRC on several previous occasions responded to the Complainant’s questions concerning the status of her complaint, as a courtesy the GRC also answered the Complainant’s string of questions on this date. The custodial agency was not copied on the Complainant’s questions regarding the status of her complaint.

⁸ The Complainant’s May 10, 2022 supplement to her March 30, 2021 complaint was denied by the GRC staff, on behalf of the GRC’s Executive Director, as out of time. In defiance of the denial, the Complainant submitted the material via various modes of delivery. Although the Complainant’s submission will not be considered by the GRC, if considered it would not be relevant. The Complainant’s primary argument appears to be that a discovery order rendered on December 20, 2021 by the Acting Commissioner of the New Jersey Department of Education directing the Lafayette Township Board of Education to produce “the video sought by petitioner” is enforceable under OPRA. It is not. Moreover, the Commissioner’s order expressly provided that “[p]etitioner shall not share the video with any third parties *nor may she use the video for any other purpose than pursuing the merits of this matter*” (emphasis added).

Complainant that she could not further supplement her complaint. The GRC informed the Complainant that she “completely disregarded [the GRC’s] instructions and submitted the supplement anyway, and as such, it will not be considered.” On the same date, the Complainant e-mailed the GRC, stating “I do not understand, I thought you said I could submit a supplement to the complaint.” On the same date, the GRC replied to the Complainant’s e-mail informing her: “I did not tell you that you could supplement your complaint . . . the content of my March 29, 2022 e-mail is clear, wherein I stated: ‘You cannot supplement your complaint at this time.’” The GRC also advised the Complainant that she again failed to copy the custodial agency with her correspondence and must do so in the future.

On May 18, 2022, the Custodian’s Counsel e-mailed the Complainant and the GRC, informing the parties that he wanted to be copied on all communications regarding the complaint.

On May 18, 2022, the Complainant submitted a “Notice of Motion For Leave to Supplement Complaint.”

On May 20, 2022, the GRC staff, on behalf of the Executive Director, e-mailed the Complainant to inform her that on May 18, 2022, she submitted to the GRC a “Notice of Motion For Leave to Supplement Complaint” pursuant to New Jersey Court Rule 4:9-4, wherein she asserted that she wished to supplement the complaint. The GRC informed the Complainant that the Executive Director was informing her that GRC regulations provide that additional amendments or supplements to a complaint beyond the 30-business day amendment period may only be accepted for consideration in the adjudication of a complaint when such acceptance is authorized by the Executive Director. The Complainant was further advised that the Executive Director stated the complaint was filed on March 30, 2021, and that on April 26, 2021, the Complainant was granted approval to submit a reply to the SOI, and that she did subsequently submit a reply. As such, the Executive Director informed the Complainant that her request to again supplement the complaint was denied as out of time (see Exhibit A).

On May 24, 2022, the Complainant submitted a “Request to Reconsider Denial to Supplement the Complaint and Record.” The Complainant asserted the following reasons why her request to supplement the complaint should be reconsidered: (1) the complaint was filed more than a year ago and the Complainant was only granted the order of the Commissioner of the New Jersey Department of Education the beginning of 2022; (2) because it takes the GRC an extended period of time to adjudicate complaints, the Commissioner’s order can be added to the complaint without prejudice; (3) it is not in the interest of judicial economy to disallow information that could quickly resolve the complaint.

On May 25, 2022, the Custodian’s Counsel forwarded a letter to the GRC. The Custodian’s Counsel reiterated the Executive Director’s reasoning for not allowing the Complainant to amend the complaint out of time as set forth in Exhibit A. Counsel also stated that the GRC’s regulations do not allow for reconsideration of the Executive Director’s determination, therefore, the Executive Director’s determination is final. Counsel further stated that the Complainant is asserting that a discovery order issued by the New Jersey Commissioner of Education on a matter pending before the Commissioner provides her with a right of access to the requested videos under OPRA; however, whether the records are accessible through discovery procedures applicable to

civil disputes is irrelevant as to whether they are accessible under OPRA. Counsel also stated that the Commissioner’s order directed that “[p]etitioner shall not share the video with any third parties nor may she use the video for any other purpose than pursuing the merits of this matter.” Counsel further stated that Complainant’s statement that “any FERPA or other privacy arguments are now moot or eradicated” is misguided. Counsel stated that the GRC does not have jurisdiction to determine what constitutes a FERPA violation.

On May 26, 2022, the Complainant submitted to the GRC a “Response to Zitomer’s Letter.” The Complainant countered the points made by Custodian’s Counsel by reiterating her arguments that are already in the evidence of record. The Complainant stated that she requests that the supporting documentation and [Acting Commissioner of the New Jersey Department of Education’s] orders granting her copies of the requested videos be added to the complaint.

On May 26, 2022, the Complainant e-mailed the GRC stating, “I assume you received my filing . . . [p]lease confirm receipt when I send.” On that same date, the GRC replied to the Complainant’s e-mail by advising the Complainant that the GRC will not continue to acknowledge the Complainant’s submissions because the Executive Director on May 20, 2022, informed her that her supplement to the complaint was denied as out of time. The GRC asked the Complainant to please abide by the Executive Director’s decision. On the same date, the Complainant e-mailed the GRC informing them that she will continue to send submissions on the record, and requests that the Executive Director reply to her on the record. The Complainant stated that an e-mail is not on record.⁹

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 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 (emphasis added). 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. (emphasis added).

In Gilleran, 227 N.J. 159, the Supreme Court held that security footage within a government building is exempt from disclosure under OPRA’s security and surveillance exemption at N.J.S.A. 47:1A-1.1. In reaching this conclusion, the Court set forth a detailed explanation of how security footage met the exemption:

⁹ The Complainant again tried to rehash this issue in e-mails to the GRC in May 2023. The GRC responded reiterating that the Complainant’s attempts to amend or supplement her complaint were denied in May 2022.

Current events since the new millennium make evident the present[-]day difficulties of maintaining daily security for public buildings and people using them. The security exceptions prevent OPRA requests from interfering with such security efforts. Even if the Legislature could not have predicted precisely all the many types of criminal, terroristic events that have happened since OPRA was enacted, the Legislature created flexible exceptions to preserve public safety and security. Now, we know that knowledge of the vulnerabilities of a security system could allow an ill-motivated person to know when and where to plant an explosive device, mount an attack, or learn the movements of persons, placing a public building or persons at risk. Information that reveals the capabilities and vulnerabilities of surveillance cameras that are part of a public facility's security system is precisely the type of information that the exceptions meant to keep confidential in furtherance of public safety.

...

A sensible application of the security exceptions supports denying release of information that undermines the operation of a government facility's security system. Compelling the wholesale release to the public of videotape product of any security camera, or combination of cameras, from a government facility's security system would reveal information about a system's operation and also its vulnerabilities. Once OPRA is interpreted to require unfettered access to the work product of any camera that is part of a governmental facility's security system, then footage from security cameras in all governmental facilities—police stations, court houses, correctional institutions—would be subject to release on demand. It takes no stretch of the imagination to realize that that would make it possible for any person to gather the information necessary to dismantle the protection provided by such security systems.

Requests for videotape product from surveillance cameras protecting public facilities are better analyzed under the common law right of access where the asserted need for access can be weighed against the needs of governmental confidentiality. (Citations omitted).

[Id. at 174-177.]

Here, the requested records consist of video surveillance footage taken from surveillance cameras in a school gym, classroom and hallway. The Custodian initially denied access to copies of the records for building safety and security reasons, citing N.J.S.A. 47:1A-1.1 and Gilleran, 227 N.J. 159. The Custodian also denied the records under FERPA, the N.J. code, and student privacy concerns. The Custodian further denied request item number 2 as vague and overly broad.

The Custodian certified in the SOI that the Complainant was permitted to view the gym videos on February 26, 2020, February 27, 2020, and March 9, 2020. The Custodian certified that, while the Complainant was allowed to view the videos, the Custodian would not provide the Complainant with copies of the videos, because to do so would pose serious security concerns.

The Custodian certified that copies of the requested videos would reveal viewable areas of the security cameras, which could disclose blind spots and areas of obstruction. The Custodian also certified that the videos would reveal the area that the school's security cameras cover, as well as potential vulnerabilities regarding the movement patterns of students and school personnel.

In her Denial of Access Complaint, the Complainant stated that she has regular access to the school property, including the classrooms and all portions of the building. The Complainant stated that she is knowledgeable about security and security procedures, and already knows much about the viewable areas of the security cameras from the access already provided to her. The Complainant also stated that for several years she has viewed the images on the camera screens in the school office. The Complainant further argued in her reply to the Custodian's SOI that the Custodian failed to meet her burden of proof that disclosure of the records would jeopardize security or create a safety risk. The Complainant stated that, as such, the security issue is moot, and she should not be denied access to the requested records.

The GRC has repeatedly held that security camera recordings are exempt from access under OPRA. In Scutro v. Cnty. of Union, GRC Complaint Nos. 2016-315 & 2016-316 (February 2019), the complainant requested security camera footage from various indoor and outdoor locations in a county facility. The custodian denied the complainant access to the records citing safety and security concerns. The Council found that the custodian had borne his burden of lawfully denying access to the complainant's requests seeking security camera footage because disclosure of such records would risk compromising security and surveillance information and techniques. The custodian cited N.J.S.A. 47:1A-1.1 and Gilleran.¹⁰

In Street v. N. Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 & 2017-104 (June 2019), the complainant requested access to security camera footage during a lockdown drill because he alleged that an incident had occurred between his daughter and a school employee during the drill.¹¹ The custodian denied access to the records, asserting the records were exempt under N.J.S.A. 47:1A-1.1 and Gilleran. The Council held that the Custodian lawfully denied access to the requested recordings because disclosure of those records under OPRA would create a risk to the safety of the persons within the school system. The Council also stated that the fact the complainant was a parent of a child shown in the video did not overcome the security exemption.

Subsequently, in Schulze v. Monmouth Cnty. Sheriff's Office, GRC Complaint No. 2018-108 (April 2020), the complainant, a Monmouth County Sheriff's Officer, sought video surveillance footage of an incident that occurred in the county courthouse, where he was the victim. In applying Gilleran, the Council held that the custodian lawfully denied access to the requested footage, noting that its release would reveal information about the court's security operation and its vulnerabilities. The Council further noted that, although the complainant's status as a victimized officer involved in the incident lessened the likelihood that the record would be used for nefarious purposes, there are no need-based exceptions to OPRA's security exemption.

¹⁰ Gilleran v. Twp. of Bloomfield, 440 N.J. Super. 490 (App. Div. 2015) was reversed in Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016). All referenced to "Gilleran" herein are to the latter citation.

¹¹ This OPRA request formed the basis of GRC Complaint No. 2017-103.

More recently, in Antonucci v. City of Long Branch (Monmouth), GRC Complaint No. 2020-207 (Interim Order May 31, 2022), the complainant, who stated that he was a captain in the City's police department requested all video/audio recordings from cameras in the police headquarters building for a specified period of time. The custodian denied the complainant access to the records citing safety and security concerns. The Council found that the custodian did not unlawfully deny access to the security camera footage because it was exempt from access under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1 and Gilleran.¹²

As is clear in the above-referenced GRC complaints, where security camera records were at issue the GRC found that a practical application of Gilleran supported the custodian's denial of access to such records in their entirety under OPRA. As the Council articulated in Street, GRC 2017-103 & 2017-104, ". . . the GRC agrees with the Supreme Court in its concerns for disclosure of security camera footage. Safety in New Jersey's schools is paramount – the recent escalation in school shootings drives the need for school districts statewide to take measures protecting the security of its buildings and occupants. Those measures necessarily include safeguarding security camera footage from disclosure to anyone under OPRA." Id.

Also, whether the Complainant had knowledge of the school grounds and/or viewable areas of the security cameras is of no moment. Furthermore, the Complainant being the parent of a child shown in the video does not overcome the security exemption. There are no "need based exceptions" to OPRA's security exemption. N.J.S.A. 47:1A-1.1. Disclosing copies of the security camera videos would provide for a dangerous precedent, opening the door to future disclosure in direct contradiction to OPRA's security exemptions. As noted by the Court in Gilleran, the Complainant's access to the footage in question is better addressed "under the common law right of access." Id. at 177.¹³

Therefore, the requested security camera videos are exempt from disclosure under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran. Thus, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6. See also Scutro, GRC 2016-315 & 2016-316, Street, GRC 2017-103 & 2017-104, Schulze, GRC 2018-108, and Antonucci, GRC 2020-207. As such, the Council declines to address the other defenses raised by the Custodian.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the requested security camera videos are exempt from disclosure under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016). Thus, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6. See also Scutro v. Cnty. of Union, GRC Complaint Nos. 2016-315 & 2016-316 Street v. N. Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 & 2017-104 (June 2019), Schulze v. Monmouth Cnty. Sheriff's Office, GRC Complaint No. 2018-108 (April 2020), and Antonucci v. City of Long

¹² The GRC notes that this complaint predates, but was decided after, the instant complaint was filed.

¹³ The GRC does not have the authority to address a requestor's common law right to access records. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013); Kelly v. N.J. Dep't of Transp., GRC Complaint No. 2010-215 (November 2011) at 2. Thus, the GRC does not address the common law right of access to the responsive footage.

Branch (Monmouth), GRC Complaint No. 2020-207 (Interim Order May 31, 2022). As such, the Council declines to address the other defenses raised by the Custodian.

Prepared By: John E. Stewart

May 23, 2023

EXHIBIT A

Moretti v. Lafayette Twp. Bd. of Educ. (Sussex), GRC Complaint No. 2021-68

Stewart, John [DCA] <John.Stewart@dca.nj.gov>

Fri 5/20/2022 11:44 AM

To: Mary Ann Moretti <maryareese@hotmail.com>

Cc: mhz@spsk.com <mhz@spsk.com>

Ms. Moretti,

On May 18, 2022, you submitted to the Government Records Council ("GRC") a "Notice of Motion: Leave to Supplement Complaint" pursuant to R. 4:9-4, which is a New Jersey Court Rule governing supplemental pleadings. You asserted that you wish to supplement the above captioned complaint with "new and significant rulings and documentation pertinent to" the above captioned complaint. The GRC's inbox was copied with your submission and the Executive Director reviewed same.

The Executive Director wanted me to make clear to you that the GRC is an administrative agency, not a court of law. As an administrative agency, the GRC is governed by the New Jersey Administrative Code, Title 5, Chapter 105, not the New Jersey Court Rules. The Executive Director draws your attention to N.J.A.C. 5:105-2.3(h)(2), which provides: "Additional amendments or supplements to a complaint submitted beyond the 30-business-day amendment period shall only be accepted for consideration in the adjudication of a complaint when such acceptance is authorized by the Executive Director." The Executive Director stated that your complaint was filed on March 30, 2021, that you were granted approval to submit a reply to the Custodian's Statement of Information ("SOI") on April 26, 2021, and that you subsequently submitted a reply to the Custodian's SOI on May 4, 2021. As such, the Executive Director stated that your request to again supplement the complaint is denied as out of time.

Very truly yours,

John E. Stewart**Government Records Council****Staff Attorney/Chief Mediator**

Tel: (609) 341-3480 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

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