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JACQUELYN A. SUÁREZ
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FINAL DECISION

August 26, 2025 Government Records Council Meeting

Elaine P. Stevens
Complainant

Complaint No. 2022-249

v.

Borough of Spring Lake Heights (Monmouth)
Custodian of Record

At the August 26, 2025, public meeting, the Government Records Council (“Council”) considered the August 19, 2025, 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:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian has not borne her burden of proving a lawful denial of access to any records potentially responsive to the Complainant’s OPRA request through a “Glomar response”. N.J.S.A. 47:1A-6. Specifically, the Custodian did not provide sufficient evidence to support that acknowledging the existence of responsive records would run contrary to OPRA. N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 447 N.J. Super. 182 (App. Div. 2016); Coulter v. N.J. State Police, GRC Complaint No. 2021-87 (Final Decision dated December 13, 2022). Thus, the Custodian’s use of the “Glomar” response with respect to the subject OPRA request was improper.
3. The responsive police report(s) are exempt from disclosure under the criminal investigation exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017); Janeczko v. N.J. Dep’t of Law and Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). Thus, the Custodian has borne her burden of proof that she lawfully denied access to the responsive records. 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 26th Day of August 2025

John A. Alexy, 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: August 28, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 26, 2025 Council Meeting**

**Elaine P. Stevens¹
Complainant**

GRC Complaint No. 2022-249

v.

**Borough of Spring Lake Heights (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Copy of the completed police report for a certain individual, date of death July 31, 2021, investigated by Detective Williams.

Custodian of Record: Janine Gillis

Request Received by Custodian: May 6, 2022

Response Made by Custodian: May 18, 2022

GRC Complaint Received: June 6, 2022

Background³

Request and Response:

On May 6, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 18, 2022, the eighth (8th) business days after receipt of the OPRA request, the Custodian responded in writing declining to confirm the existence of responsive records under N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 447 N.J. Super. 182 (App. Div. 2016). The Custodian also stated that even if such records existed, they would be exempt under the criminal investigatory exemption of N.J.S.A. 47:1A-1.1; and Executive Order No. 26 (“EO 26”).

Denial of Access Complaint:

On June 6, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that she “applied for [a] police report . . . over 2 months ago” The Complainant stated that the Custodian “just” responded in writing denying access to the requested records pursuant to N.J.S.A. 47:1A-1.1 as criminal investigatory

¹ No legal representation listed on record.

² Represented by Michael L. Collins, Esq., of King, Moench & Collins LLP (Red Bank, NJ). Previously represented by Dennis Collins, Esq. of Collins, Vella and Casello, LLC (Manasquan, 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.

records, under privacy considerations, and through the medical and psychological information considerations of EO 26. The Complainant stated that she had a personal need for the requested records because they were related to a family member. The Complainant noted that to her knowledge, the investigation was closed, and no criminal charges were filed. The Complainant stated that she wanted “common law records.”⁴

Statement of Information:

On June 30, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 6, 2022. The Custodian certified that she responded in writing on May 18, 2022, denying access to the requested records under N.J.S.A. 47:1A-1.1, EO 26 and N. Jersey Media Grp., Inc., 447 N.J. Super. 182.

The Custodian stated that the Complainant acknowledged that the subject matter involved a “criminal investigation where no charges were filed against any person” and that the “investigation is done.” The Custodian stated that the underlying incident involved the death of the Complainant’s family member, who “died at home with no apparent cause of [d]eath at the time.” The Custodian stated that the Complainant advised her that she wanted the records because she believed “foul play” may have been involved. The Custodian argued that, under N. Jersey Media Grp., Inc., she lawfully asserted that she could not confirm the existence of responsive records.

The Custodian stated that if records existed, a police report would typically comprise of narratives, witness statements, discussions with the Medical Examiner and Prosecutor, and evidence collection. The Custodian further stated that the records could include investigation conclusions, allegations of domestic violence, medical histories, *etc.* The Custodian asserted that such records would qualify as criminal investigatory records and, as such, were exempt from disclosure under N.J.S.A. 47:1A-1.1. The Custodian further stated that these records would also be exempt from disclosure in accordance with the privacy considerations of persons not charged and as medical/psychological records set forth in EO 26.

The Custodian also argued that the Complainant’s common law request is not “justiciable before the [GRC].”

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to

⁴ The GRC notes that it has no authority over the common law right of access. 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). Thus, this issue is not properly before the GRC.

N.J.S.A. 47:1A-5(g).⁵ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

In the matter before the Council, the Complainant submitted her OPRA request on May 6, 2022. In the SOI, the Custodian certified that she responded in writing on May 18, 2022, the eighth (8th) business day after receipt of the subject OPRA request, denying access to the Complainant's request. Thus, the evidence of record shows that the Custodian failed to timely respond to the Complainant's OPRA request.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

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.

Glomar Response

The New Jersey Appellate Division has previously ruled on the issue of whether an agency can "neither confirm nor deny" the existence of records in response to an OPRA request. N. Jersey Media Grp., Inc., 447 N.J. Super. 182. In that case, the plaintiff sought records under OPRA concerning an individual who was not charged with a crime. The court established a two-part test to determine when an agency may employ a "Glomar response"⁶ to an OPRA request:

[T]he agency [must] (1) rel[y] upon the exemption authorized by OPRA that would itself preclude the agency from acknowledging the existence of such documents and (2) present[] a sufficient basis for the court to determine that the claimed exemption applies.

⁵ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

⁶ The moniker stems from Phillippi v. CIA, 546 F.2d 1009, 1011 (D.C. Cir. 1979), where the CIA responded to a Freedom of Information Act request regarding the *Hughes Glomar Explorer*, an oceanic ship allegedly owned by the federal government but officially listed as a private vessel.

[N. Jersey Media Grp., Inc., 447 N.J. Super. at 188.]

In N. Jersey Media Grp., Inc., the defendant's initial response to the OPRA request argued that confirming whether the subject of the request was arrested, charged, or involved in an investigation could cause "irreparable harm" to the subject and open the defendant and its employees to civil liability. Id. at 205. It was not until after the plaintiff challenged the defendant in court that they listed specific OPRA exemptions: the criminal investigatory records exemption and the ongoing investigation exemption. Id. The court rejected those exemptions because they only applied where government records actually existed. Id. at 207.

However, the court noted that N.J.S.A. 47:1A-9(b) protected a preexisting grant of confidentiality for records if established by, among other authorities, judicial case law. Id. at 202. The court then highlighted pre-OPRA precedent, demonstrating the need for confidentiality pertaining to whether an individual has been arrested or charged. Id. at 203. According to the court, the grant of confidentiality benefits law enforcement in conducting investigations and protects the privacy interests of individuals. Id. at 203-04. Therefore, the court held that the defendant satisfied its two-part test and found that its "Glomar" response was valid. Id. at 206.

The Council first addressed the application of the "Glomar response" in Harmon v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2017-38 (February 2019). In that matter, the complainant sought records pertaining to possible criminal investigations based on her complaints to that office regarding another individual. The custodian responded denying access to the subject OPRA request and employing the "Glomar response." The custodian maintained his position in the SOI, stating that he could neither confirm nor deny the existence of responsive records. In support of his position, the custodian argued his denial was consistent with N. Jersey Media Grp., Inc. and N.J.S.A. 47:1A-9(b) and because the complainant's personal knowledge of a potential investigation did not abrogate the "Glomar response." The Council agreed, holding that the custodian's use of the "Glomar response" was appropriate because the facts were "on point with N. Jersey Media Grp., Inc.." Id. at 4.

Conversely, in Coulter v. N.J. State Police, GRC Complaint No. 2021-87 (Final Decision dated December 13, 2022), the custodian relied on "Glomar" to deny access to records the Complainant sought in relation to an alleged complaint filed against him. Upon review, the Council held that the custodian failed to provide any persuasive arguments for deploying a "Glomar" response. The Council noted that the custodian failed to prove irreparable harm where the complainant sought records about a complaint filed against him.

Here, the Custodian utilized the "Glomar response" to deny access to the subject OPRA request, stating that she could not confirm or deny the existence of responsive records in accordance with N. Jersey Media Grp., Inc. The Custodian further stated that if any responsive records existed, they would be exempt from disclosure as criminal investigatory records and in accordance with the privacy interests set forth in EO 26. The Custodian maintained this position in the SOI certifying that the Complainant acknowledged her request sought records related to a criminal investigation involving the death of a family member where no charges were filed. The Custodian certified that if records existed, they would include police reports typically comprised of narratives, witness statements, discussions with the Medical Examiner and Prosecutor, evidence

collection, investigation conclusions, allegations of domestic violence, and medical histories, among other records. The Custodian argued that such records qualified as criminal investigatory records exempt from disclosure under N.J.S.A. 47:1A-1.1 and in accordance with the privacy considerations of EO 26.

After reviewing the evidence of record here, the GRC finds the Custodian's reliance on a "Glomar response" to be unpersuasive. As set forth in N. Jersey Media Grp., Inc., 447 N.J. Super. 182, the Custodian must meet the two-prong test evaluated in that case to qualify under the response. For both prongs of the test, the Custodian simply stated that she could not confirm or deny the existence of any responsive records, and that if any did exist they would be exempt from disclosure under the criminal investigatory record exemption and in accordance with the privacy interests set forth in EO 26. The Custodian maintained this position in the SOI and certified that if records did exist they would include, among other records, police reports typically comprised of narratives, witness statements, discussions with the Medical Examiner and Prosecutor, evidence collection, investigation conclusions, allegations of domestic violence, and medical histories.

As noted in N. Jersey Media Grp., Inc., "[w]hen evaluating a 'Glomar' response, federal courts must 'accord 'substantial weight' to the agency's affidavits.'" Id. at 209 (citing Wilner v. NSA, 592 F.3d 60, 68 (2d Cir. 2009) (quoting Minier v. CIA, 88 F.3d 79, 803-04 (9th Cir. 1996))). Here, the Custodian did not submit argument on why the criminal investigatory exemption would "preclude the agency from acknowledging the existence of such documents." Instead, and more like Coulter than Harmon, the arguments in the Custodian's SOI are vague and fail to articulate a sufficient basis for the GRC to determine that reliance on the "Glomar response" was lawful. For these reasons, the GRC is not persuaded that the Custodian's acknowledgement of a criminal investigation, without more, is a sufficient basis to utilize the "Glomar response."

Accordingly, the Custodian has not borne her burden of proving a lawful denial of access to any records potentially responsive to the Complainant's OPRA request through a "Glomar response". N.J.S.A. 47:1A-6. Specifically, the Custodian did not provide sufficient evidence to support that acknowledging the existence of responsive records would run contrary to OPRA. N. Jersey Media Grp., Inc., 447 N.J. Super. 182; Coulter, GRC 2021-87. Thus, the Custodian's use of the "Glomar" response with respect to the subject OPRA request was improper.

Criminal Investigatory Records

OPRA defines a criminal investigatory record as "a record which is not required by law to be made, maintained, or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding." N.J.S.A. 47:1A-1.1. Therefore, for a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test. See O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 380-381 (App. Div. 2006).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017), on appeal from N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015). In the appeal, the Court affirmed that OPRA's criminal investigatory records exemption applies to police records which originate from

a criminal investigation. However, the court stated that “to qualify for the exception — and be exempt from disclosure — a record (1) must not be ‘required by law to be made,’ and (2) must ‘pertain[] to a criminal investigation.’ N.J.S.A. 47:1A-1.1.” Id. at 564.

The Court made it clear that if the first prong cannot be met because such a record is required by law to be made, then that record “cannot be exempt from disclosure under OPRA’s criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.” Id. Although the Court agreed with the Appellate Division’s analysis in O’Shea, 410 N.J. Super. at 382, that a clear statement of policy to police officers from the State Attorney General has “the force of law for police entities,” it refused to conclude that records retention schedules adopted by the State Records Committee meet OPRA’s “required by law” standard.

The Court also noted that even if a record is not required by law to be made, it must still be found to pertain to a criminal investigation. The Court reiterated the Appellate Division’s observation that “some police records relate to an officer’s community-caretaking function; others to the investigation of a crime.” Id. at 569 (citing N. Jersey Media Grp., Inc., 441 N.J. Super. at 105). Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a “case-by-case analysis.” However, the Court pointed out that police records that stem from “an investigation into actual or potential violations of criminal law,” such as “detailed investigative reports and witness statements,” will satisfy the second prong of OPRA’s criminal investigatory records exemption. Id. (emphasis added).

The Council has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. In Janeczko v. N.J. Dep’t of Law and Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), the Council held that “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.”⁷ Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete.”

In the instant matter, the Complainant sought a copy of the completed police report relating to the unexpected death of the Complainant’s family member, investigated by Detective Williams. The Custodian certified that the requested records were related to the investigation of said death, which occurred at the Complainant’s family member’s home “with no apparent cause of death at the time.” The Custodian asserted that the Complainant acknowledged the existence of a criminal investigation involving the death and that potentially responsive records would be exempt under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1. Thereafter, the Complainant filed her Denial of Access Complaint seeking disclosure of the requested records. In the SOI, the Custodian maintained her position and certified that the responsive records, if any existed, would include, among other records, police reports typically comprised of narratives, witness statements, discussions with the Medical Examiner and Prosecutor, evidence collection, investigation conclusions, allegations of domestic violence, and medical histories. The Custodian argued that such records qualified as criminal investigatory records exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

⁷ The GRC’s ruling was affirmed in an unpublished opinion of the Appellate Division.

In applying to two-prong test set forth in Lyndhurst, 229 N.J. 541, the GRC is compelled to find that the criminal investigatory exemption was properly deployed. Regarding the first prong of the criminal investigatory test, the record is void of any competent evidence to prove that the responsive report was “required by law” to be made, maintained, or kept on file. Regarding the second prong, the underlying incident involved the death of the Complainant’s family member, who unexpectedly died at home. According to the Custodian, this event triggered a criminal investigation by local authorities and the creation of certain reports, inclusive of narratives, witness statements, discussions with the Medical Examiner and Prosecutor, evidence collection, investigation conclusions, allegations of domestic violence, and medical histories, among other records. Thus, the responsive records meet the two-prong standard necessary to be considered criminal investigatory under OPRA. N.J.S.A. 47:1A-1.1; Lyndhurst, 229 N.J. 541; Janeczko, GRC 2002-79. Moreover, although the subject criminal investigation resulted in a “non-criminal” finding, longstanding case law still supports the application of the criminal investigatory exemption to those records associated therewith that were not required by law to be made. Lyndhurst, 229 N.J. at 569; Janeczko, GRC 2002-79, *et. seq.* OPRA supports that any record falling within the two-prong test, absent a time or status constraint, are exempt from disclosure under the criminal investigatory exemption. Lyndhurst, 229 N.J. 541; Janeczko, GRC 2002-79, *et seq.*⁸

Accordingly, the responsive police report(s) are exempt from disclosure under the criminal investigation exemption. N.J.S.A. 47:1A-1.1; Lyndhurst, 229 N.J. 541; Janeczko, GRC 2002-79, *et seq.* Thus, the Custodian has borne her burden of proof that she lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian has not borne her burden of proving a lawful denial of access to any records potentially responsive to the Complainant’s OPRA request through a “Glomar response”. N.J.S.A. 47:1A-6. Specifically, the Custodian did not provide sufficient evidence to support that acknowledging the existence of responsive records would run contrary to OPRA. N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 447

⁸ The GRC notes that while the criminal investigatory exemption applies to records meeting the two-prong N. Jersey Media Grp., Inc., test regardless of status or outcome, this application only applies to requests made under OPRA. The GRC cannot speak to the disclosability of these types of records through other request processes, whether through informal requests, common law requests, or judicial processes.

N.J. Super. 182 (App. Div. 2016); Coulter v. N.J. State Police, GRC Complaint No. 2021-87 (Final Decision dated December 13, 2022). Thus, the Custodian's use of the "Glomar" response with respect to the subject OPRA request was improper.

3. The responsive police report(s) are exempt from disclosure under the criminal investigation exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017); Janeczko v. N.J. Dep't of Law and Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). Thus, the Custodian has borne her burden of proof that she lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

Prepared By: Jennifer C. Howell
Staff Attorney

August 19, 2025