



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

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

April 29, 2025 Government Records Council Meeting

John Jones
Complainant

GRC Complaint No. 2022-371

v.

Township of Jefferson (Morris)
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 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 the responsive police reports are exempt 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 (2017); Janeczko v. N.J. Dep’t of Law and Pub. 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 29th Day of April 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: May 5, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**John Jones¹
Complainant**

GRC Complaint No. 2022-371

v.

**Township of Jefferson (Morris)²
Custodial Agency**

Records Relevant to Complaint: Electronic copy of Detective Al Stern's Report of Suicide with regard to a specific individual that was referenced in the January 9, 1988 police report of Detective Kenneth Pielich and identified as Incident No. 88-0338.

Custodian of Record: Michele Reilly
Request Received by Custodian: July 12, 2022
Response Made by Custodian: July 21, 2022
GRC Complaint Received: July 28, 2022

Background³

Request and Response:

On July 12, 2022, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On July 21, 2022, Deputy Clerk Amanda Nevis responded in writing on behalf of the Custodian denying access to the requested records under the criminal investigatory exemption pursuant to N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On July 28, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he filed an OPRA request to the Custodian on July 12, 2022, and the Custodian denied it on July 21, 2022. The Complainant stated that the Custodian identified two (2) records, Investigation Reports, Nos. 88-0338 and 88-0041, as potentially responsive to Complainant's request. The Complainant asserted that the Custodian denied access to the reports because they "[were] not releasable per N.J.S.A. 47:1A-1.1 because the records [were] criminal investigatory."

¹ Represented by Nancy Balboa (New York, NY).

² Represented by Thomas Ryan of Laddey, Clark & Ryan (Sparta, 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.

Statement of Information:

On August 15, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 12, 2022. The Custodian certified her search returned two (2) homicide investigation reports, bearing identification nos. 88-0038 and 88-0041, had been identified as potentially responsive to the Complainant’s OPRA request. The Custodian certified that Ms. Nevis responded in writing on her behalf on July 21, 2022, denying access to those reports under N.J.S.A. 47:1A-1.1.

The Custodian argued that said records qualified as a criminal investigatory record and, as such, were exempt from disclosure under N.J.S.A. 47:1A-1.1. The Custodian certified that said records related to a murder and suicide that occurred within the Township.

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 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 also long held that once a record is determined to be a criminal investigatory record, it is exempt from access. See 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), holding 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. Moreover, with respect to concluded investigations, the Council pointed out in Janeczko, GRC 2002-79, *et seq.* that, "[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete." Moreover, the Council has previously found that investigative reports were exempt as criminal investigatory records. See Crook v. Atlantic Cnty. Prosecutor's Office, GRC Complaint No. 2010-92 (March 2011).

In the instant matter, the Complainant sought records identified by the Custodian as "Homicide investigation report[s] plus Detective Report/Witness Interview . . ." which were related to a murder-suicide. The Custodian denied access to the records on July 21, 2022 under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1. Thereafter, the Complainant filed his Denial of Access Complaint seeking disclosure of the requested records. In the SOI, the Custodian maintained her position and certified that the records, which were found to be responsive to the Complainant's request, were indeed criminal investigatory records exempt from access pursuant to N.J.S.A. 47:1A-1.1.

With regard to 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 a murder-suicide of a juvenile and his mother and an intentional fire being set to the family home. The incident triggered a criminal investigation by local authorities and gained the attention of news-gathering agencies.⁴ 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; N. Jersey Media Grp. Inc., 229 N.J. 541; Janeczko, GRC 2002-79.

Accordingly, the responsive police reports are exempt under the criminal investigation exemption. N.J.S.A. 47:1A-1.1; N.J. Media Grp., Inc., 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.

⁴ <https://www.latimes.com/archives/la-xpm-1988-01-11-mn-23520-story.html> (accessed February 20, 2025).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the responsive police reports are exempt 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 (2017); Janeczko v. N.J. Dep't of Law and Pub. 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

April 15, 2025