



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

January 28, 2025 Government Records Council Meeting

Leonard Thor
Complainant

Complaint No. 2022-508

v.

Marlboro Township Public Schools
(Monmouth)
Custodian of Record

At the January 28, 2025, public meeting, the Government Records Council (“Council”) considered the January 21, 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 Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s September 6, 2022, OPRA request seeking video surveillance footage from a school bus security system that contains images and audio of students. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA’s security and surveillance information and techniques, rendering them exempt from disclosure. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159 (2016); Scutro v. Cnty. of Union, GRC Complaint Nos. 2016-315 and 2016-316 (2019); Street v. North Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 and 2017-104 (June 2019). Additionally, the Council declines to address the other defenses raised by the Custodian because the requested records are already exempt under N.J.S.A. 47:1A-1.1.

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 28th Day of January 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: January 30, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 28, 2025 Council Meeting**

**Leonard Thor¹
Complainant**

GRC Complaint No. 2022-508

v.

**Marlboro Twp. Public Schools (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Copy of a video recording from a school bus security system relating to an incident that occurred on April 1, 2022 at a Marlboro Township Public School (“MTPS”) bus stop involving a specific individual and a MTPS bus driver.

Custodian of Record: Vincent Caravello

Request Received by Custodian: September 6, 2022

Response Made by Custodian: September 14, 2022

GRC Complaint Received: September 22, 2022

Background³

Request and Response:

On September 5, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 14, 2022, the Custodian responded in writing denying access to the requested recording because it exposed images of numerous students and disclosure would compromise the integrity of a security system as per N.J.S.A. 47:1A-1.1. The Custodian noted that MTPS was not in possession of any responsive audio recordings.

Denial of Access Complaint:

On September 22, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted an OPRA request to the Custodian on September 5, 2022, seeking a video recording from a school bus security system relating to an incident that occurred on April 1, 2022, at a MTPS bus stop involving

¹ No legal representation listed on record.

² Represented by Michael J. Gross, Esq. of Kenney, Gross, Kovats and Parton (Manalapan, NJ). Previously 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.

a specific individual and a MTPS bus driver. The Complainant stated that he noted that he would accept the recording with redactions of faces based on privacy.

The Complainant stated that on September 14, 2022, the Custodian denied access to a responsive video because it exposed images of numerous students and disclosure would compromise the integrity of a security system. The Complainant contended he is entitled to the requested records pursuant to Alt v. Vineland Bd. of Educ., GRC Complaint No. 2013-126 (December 2013).

Statement of Information:

On November 1, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 6, 2022. The Custodian certified that he responded in writing on September 14, 2022, denying access to the requested recording.

The Custodian argued the video was not disclosable pursuant to N.J.S.A. 47:1A-1.1. The Custodian stated that disclosure of the responsive footage would jeopardize the security of the school bus and persons therein and would create a risk to the safety of the persons that ride the bus. The Custodian additionally contended the recording contains images and audio of students, which qualify as student records, and are thus not disclosable. The Custodian stated that that MTPS did not have equipment needed to modify the video to erase the images of the students.

The Custodian contended that his denial of access to the responsive security footage under OPRA’s security exemption was lawful and in accordance with the well-established case law and GRC rulings. Gilleran v. Bloomfield, 227 N.J. 159 (2016) (holding 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); Scutro v. Cnty. of Union, GRC Complaint Nos. 2016-315 and 2016-316 (February 2019) (custodian’s denial of access for security camera footage of a former public employee and of himself at various locations was lawful under OPRA’s emergency and security exemptions as disclosure would expose security and surveillance vulnerabilities); Street v. North Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 and 2017-104 (June 2019) (custodian’s denial of access for lockdown camera footage was lawful pursuant to OPRA’s emergency and security exemptions as disclosure would jeopardize procedures in place for lockdown drills and would create a risk to the safety of the persons within the District’s schools).

The Custodian argued that disclosure of the requested recording would reveal otherwise nonpublic information, jeopardize the school’s security system, and compromise the safety of students and staff. The Custodian asserted that disclosure would expose the security camera’s coverage area, the vulnerabilities pertaining to the security system, the movement patterns of students and school personnel, including the location of students on the bus and their pick-up/drop-off locations. The Custodian argued that OPRA’s security exemption shields this type of information from disclosure to the public.

The Custodian further argued that his denial of access was lawful because the video footage was a student record and not disclosable. See N.J.A.C. 6A:32-7.5(a); N.J.A.C. 6A:32-2.1.

The Custodian noted that MTPS did not have the equipment needed to make the requisite redactions. In addition, the Custodian stated that it would be unlawful for MTPS to release a redacted version of the footage because the Complainant would still be able to identify certain students in the footage, namely because he identified a particular individual.

The Custodian argued that Alt is not applicable to the instant matter. The Custodian stated that the council never reached the merits of the complaint in Alt because the custodian failed to respond to file the requisite SOI. The Custodian stated that in this matter the Custodian submitted the SOI, which identified the basis for his lawful denial.

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).

The issue of whether security camera footage qualifies as an OPRA exemption has previously been addressed by both the New Jersey Supreme Court and GRC. In Gilleran, 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:

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.]

The GRC has relied upon the Gilleran decision in rendering its own decisions. For example, in Scutro, the complainant sought video surveillance footage from a camera located in a government building and parking lot. In Street, the complainant sought video surveillance footage taken from a camera located in a school gym during a lockdown drill. In each case, the GRC found that the requested records were exempt from disclosure under OPRA's emergency and security exemptions because, if revealed, the footage would expose the security system's operations and vulnerabilities and jeopardize the safety of innocent persons.

At issue in the instant case is the disclosure of security camera footage from a school bus security system that contains images and audio of students. A practical application of the prevailing cases discussed above to the instant matter support the Custodian's lawful denial of access to the requested records. Specifically, disclosure of the requested video would reveal otherwise nonpublic information, jeopardize the school's security system, and compromise the safety of students and staff. Also, disclosure would expose the security camera's coverage area, the vulnerabilities pertaining to the security system, the movement patterns of students and school personnel, including the location of students on the bus and their pick-up/drop-off locations. This content is the type of information that is deemed protected and specifically exempt from disclosure under N.J.S.A. 47:1A-1.1.

Finally, the GRC finds the Complainant's reliance on Alt, to be without merit. The Alt decision was rendered solely as a result of the custodian's failure to submit the requisite SOI detailing the basis of his denial of access. In this case, the Custodian submitted an SOI, which identified the statutory basis for his denial. Accordingly, the GRC finds that Alt is not applicable to this matter.

For these reasons, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's September 6, 2022 OPRA request seeking video surveillance footage from a school bus security system that contains images and audio of students. 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; Scutro, GRC 2016-315, *et. seq.*; Street, GRC 2017-103, *et. seq.* The Council declines to address the other defenses raised by the Custodian because the requested records are already exempt under N.J.S.A. 47:1A-1.1.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's September 6, 2022 OPRA request seeking video surveillance footage from a school bus security system that contains images and audio of students. N.J.S.A. 47:1A-6. The release of such records creates a risk protected by OPRA's security and surveillance information and techniques, rendering them exempt from disclosure. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159 (2016); Scutro v. Cnty. of Union, GRC Complaint Nos. 2016-315 and 2016-316 (2019); Street v. North Arlington Sch. Dist. (Bergen), GRC Complaint Nos. 2017-103 and 2017-104 (June 2019). Additionally, the Council declines to address the other defenses raised by the Custodian because the requested records are already exempt under N.J.S.A. 47:1A-1.1.

Prepared By: Jennifer C. Howell
Staff Attorney

January 21, 2025