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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

December 10, 2024 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2022-635

v.

Lacey Township Police Department (Ocean)
Custodian of Record

At the December 10, 2024, public meeting, the Government Records Council (“Council”) considered the December 3, 2024 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 lawfully denied access to the requested computer-aided dispatch reports with narratives under the inter-agency or intra-agency advisory, consultative or deliberative material exemption. N.J.S.A. 47:1A-6. Specifically, the evidence of record reveals that the records were in draft form at the time of the Complainant’s OPRA request, exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83 (App. Div. 2018).

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 10th Day of December 2024

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: December 12, 2024



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 10, 2024 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2022-635

v.

**Lacey Township Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of “[a]ll CAD reports with narratives for police response to Lacey Exxon, 341 Rt. 9, on the days of October 13th and October 14th 2022.”

Custodian of Record: Veronica Laureigh

Request Received by Custodian: October 14, 2022

Response Made by Custodian: October 21, 2022

GRC Complaint Received: November 10, 2022

Background³

Request and Response:

On October 14, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 21, 2022, the Custodian responded in writing to the Complainant’s request informing him that the requested records are draft documents and not subject to OPRA per N.J.S.A. 47:1A-1.1. The Custodian further informed the Complainant that the anticipated completion date for the requested records would be November 7, 2022.

Denial of Access Complaint:

On November 10, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he filed the within OPRA request on October 14, 2022. The Complainant stated that the Custodian responded to his request on October 21, 2022, informing him that “pursuant to NJSA 47 1A-1:1 (sic) draft records are not

¹ No legal representation listed on record.

² Represented by Christopher J. Connors, Esq., of Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors (Forked River, 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.

subject to OPRA[.] We estimate the records should be complete by November 7, 2022.” The Complainant further stated, “11/9 still no records.”

Statement of Information:

On March 14, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she responded to the Complainant’s request on October 21, 2022, informing him that pursuant to N.J.S.A. 47:1A-1.1, draft records are not subject to OPRA; however, the records are estimated to be completed by November 7, 2022. The Custodian further certified that because draft records are not subject to production under OPRA, a denial of access is appropriate.

The Custodian further certified that it is well settled that a custodian has no obligation to respond to an ongoing or continuing request; therefore, when records are denied as draft documents, the complainant is required to submit a new OPRA request for those records once the records are finalized. The Custodian cited Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order April 25, 2012) and Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (Interim Order February 28, 2007), in support of her argument. The Custodian certified that notwithstanding her lack of any obligation to disclose the finalized records until another OPRA request was filed, she did so on November 15, 2022.

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 excludes from the definition of a government record “inter-agency or intra-agency advisory, consultative or deliberative material.” N.J.S.A. 47:1A-1.1. It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the “deliberative process privilege.”

In O’Shea v. West Milford BOE, GRC Complaint No. 2004-93 (April 2006), the Council stated that:

[N]either the statute nor the courts have defined the terms . . . ACD in the context of the public records law. The Council looks to an analogous concept, the deliberative process privilege, for guidance in the implementation of OPRA’s ACD exemption. Both the ACD exemption and the deliberative process privilege enable a governmental entity to shield from disclosure material that is pre-decisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies. In Re the Liquidation of Integrity Ins. Co., 165

N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Regulations, 182 N.J. 149 (App. Div. 2004).

[Id.]

In Libertarians for Transparent Gov't, 453 N.J. Super. 83, the Appellate Division discussed the deliberative process privilege at length regarding a request for draft meeting minutes, stating:

The applicability of the deliberative process privilege is governed by a two-prong test. The judge must determine both that a document is (1) “pre-decisional,” meaning it was “generated before the adoption of an agency’s policy or decision;” and (2) deliberative, in that it “contain[s] opinions, recommendations, or advice about agency policies.” [Educ. Law Ctr. v. Dep’t of Educ., 198 N.J. at 276 (quoting In Re: Liquidation of Integrity Ins. Co., 165 N.J. 75, 84-85 (2000))]. If a document satisfies both prongs, it is exempt from disclosure under OPRA pursuant to the deliberative process privilege.

[Id. at 90-91.]

Regarding the first prong, the court stated that “a draft is not a final document. It has been prepared for another person or persons’ editing and eventual approval.” Id. at 90. Therefore, the court held that by their very nature draft meeting minutes are pre-decisional since they are subject to revision and not yet approved for public release. Id. at 90-91.

Regarding the second prong, the court held that “the document must be shown to be closely related to the ‘the formulation or exercise of . . . policy-oriented judgment or [to] the process by which policy is formulated.’” Ciesla v. N.J. Dep’t of Health & Sr. Servs., 429 N.J. Super. 127, 138 (App. Div. 2012) (quoting McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 619-20 (App. Div. 2010)). Id. at 91. The court found that the requested draft minutes, as compiled by the writer in attendance at the meeting, were subject to additions, suggestions, and other edits from the members of the public body. Id. Thus, the draft minutes satisfied the second prong of the test. Id. at 92.

Here, the Complainant’s October 14, 2022 OPRA request sought CAD reports with narratives for police responses to a service station. The Custodian denied access because the records were in draft form at the time of the request and would not be finalized until approximately November 7, 2022. Applying the relevant case law to the issue before the Council, the GRC is satisfied that the Custodian lawfully denied access to the draft records as they meet the two-prong ACD test. First, as “draft” versions, the records are pre-decisional because they are subject to revision and eventual approval. See Libertarians for Transparent Gov’t, 453 N.J. Super. at 90-91. Next, the records are deliberative because they are subject to further examination vis-a-vis police department policy and recommendation pending finalization; thereby satisfying the second prong of the test. Moreover, draft documents do not lose their protections from disclosure even after a final decision has since been made. See Ciesla, 429 N.J. Super. at 140-41. As such, notwithstanding the Custodian’s future actions of disclosing the desired records to the Complainant once they were finalized, she was under no duty to have done so because the records were in draft form at the time of the October 14, 2024 OPRA request.

Accordingly, the Custodian lawfully denied access to the requested CAD reports with narratives under the ACD exemption. N.J.S.A. 47:1A-6. Specifically, the evidence of record reveals that the records were in draft form at the time of the Complainant's OPRA request, exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't, 453 N.J. Super. 83.

Finally, the GRC notes the Custodian was correct to note that once the denial was proffered, she was under no obligation to disclose the record once it became finalized. See Paff, GRC 2010-307. See also Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 201). Thus, the Complainant would have been required to file a new OPRA request on or after November 7, 2022 to obtain access to the finalized CAD report.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the requested computer-aided dispatch reports with narratives under the inter-agency or intra-agency advisory, consultative or deliberative material exemption. N.J.S.A. 47:1A-6. Specifically, the evidence of record reveals that the records were in draft form at the time of the Complainant's OPRA request, exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018).

Prepared By: John E. Stewart

December 3, 2024