



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

JACQUELYN A. SUÁREZ  
*Commissioner*

### FINAL DECISION

#### April 29, 2025 Government Records Council Meeting

Chandra S. Jatamoni  
Complainant  
v.

GRC Complaint No. 2022-665

East Brunswick Police Department (Middlesex)  
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 Custodian has borne her burden of proof that she lawfully denied access to the requested incident report because it is exempt from disclosure under the criminal investigatory exemption. See N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

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 29<sup>th</sup> 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**

**Chandra S. Jatamoni<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-665**

**v.**

**East Brunswick Police Department (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of an “incident report” from a December 4, 2022 shoplifting incident at JC Penny in East Brunswick Township (“Township”).

**Custodian of Record:** Tamar Lawful

**Request Received by Custodian:** December 7, 2022

**Response Made by Custodian:** December 8, 2022

**GRC Complaint Received:** December 9, 2022

**Background<sup>3</sup>**

**Request and Response:**

On December 7, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 8, 2022, the Custodian responded in writing denying access to an incident report under the criminal investigatory exemption in N.J.S.A. 47:1A-1.1 and citing Janeczko v. Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

**Denial of Access Complaint:**

On December 9, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he sought the requested incident report in connection with an ongoing child custody situation. The Complainant disputed the Custodian’s denial of access.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Shaun S. Peterson, Esq. of Hoagland, Longo, Moran, Dunst & Doukas, LLP. (New Brunswick, NJ).

<sup>3</sup> 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 March 3, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on December 7, 2022. The Custodian certified that East Brunswick Police Department located the responsive record and determined it was exempt from disclosure. The Custodian certified that she responded in writing on December 8, 2022 denying the Complainant’s request because it was a criminal investigatory record exempt under OPRA pursuant to N.J.S.A. 47:1A-1.1-13 and Janeczko, GRC 2002-79, *et seq.*

The Custodian argued, citing to Nance v. Scotch Plains Police Dep’t, GRC Complaint No. 2003-125 (January 2005), Rivera v. Passaic Cnty. Sheriff’s Office, GRC Complaint No. 2010-152 (May 2011), Rivera v. Town of West New York (Hudson), GRC Complaint No. 2010-208 (February 2013) (citing Bart v. City of Passaic, GRC Complaint No. 2007-162 (April 2008) and Executive Order No. 26 (Gov. McGreevy 2002)), Connelly v. Twp. of Montville (Morris), GRC Complaint No. 2013-59 (September 2013), Hockensmith v. Atlantic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-288 (March 2015), that “criminal investigatory records” are exempt from disclosure when they pertain to a criminal investigation or related civil enforcement proceeding and are not required to be maintained by law. The Custodian argued that she lawfully denied access to the responsive incident report based prevailing case law.

### 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 (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.’” Id. at 564 (quoting N.J.S.A. 47:1A-1.1).

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.” Id. at 365 (citing N.J.S.A. 47:1A-1.1). 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. Id.

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).<sup>4</sup> Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a “case-by-case analysis.” Id. 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, GRC 2002-79, *et seq.*, 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 that, “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete.” Id.

Here, the Custodian certified that the responsive incident report was considered a criminal investigatory record and as such, was exempt from disclosure because it is not required under law to be made, maintained, or kept on file. Further, the Custodian affirmed that the incident report contained details pertaining to the criminal investigation of the alleged shoplifting incident in question. The connection of the responsive report to the criminal investigation is also supported by a plain reading of the Complainant’s OPRA request and Denial of Access Complaint commentary. As such, in applying the two prongs of the criminal investigatory exemption found in N. Jersey Media Grp., Inc. to the responsive incident report, the GRC is satisfied that the Custodian lawfully denied access thereto. See N. Jersey Media Grp., Inc., 229 N.J. 541; see also Janeczko, GRC 2002-79, *et seq.*

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the requested incident report because it is exempt from disclosure under the criminal investigatory exemption. See N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc., 229 N.J. 541; Janeczko, GRC 2002-79, *et seq.*

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<sup>4</sup> Not all police duties are focused upon investigation of criminal activity. Only those records created in a police officer’s capacity as a criminal investigator are subject to OPRA’s criminal investigatory records exemption.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the requested incident report because it is exempt from disclosure under the criminal investigatory exemption. See N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

Prepared By: Maria M. Rossi  
Staff Attorney

April 15, 2025