



State of New Jersey

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FINAL DECISION

April 29, 2025 Government Records Council Meeting

James Poliero
Complainant

GRC Complaint No. 2023-108

v.

Borough of Haddonfield Police Department (Camden)
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 because the incident reports responsive to the Complainant’s OPRA request were the subject of an ongoing investigation by the Borough of Haddonfield Police Department and a multi-jurisdictional task force at the time of the Complainant’s OPRA request, the disclosure of which would be inimical to the public interest, they were exempt from disclosure under N.J.S.A. 47:1A-3(a). See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017). Thus, the Custodian bore her burden of proof that the incident reports met the “investigation in progress” test necessary to be exempt from disclosure under OPRA. 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**

**James Poliero¹
Complainant**

GRC Complaint No. 2023-108

v.

**Borough of Haddonfield Police Department (Camden)²
Custodial Agency**

Records Relevant to Complaint: Copies of police reports for any Tavistock County Club area burglaries or attempted burglaries since April 1, 2023.

Custodian of Record: Deanna Bennett

Request Received by Custodian: May 5, 2023

Response Made by Custodian: May 9, 2023

GRC Complaint Received: May 15, 2023

Background³

Request and Response:

On May 3, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 9, 2023, the Custodian responded in writing denying the Complainant’s OPRA request due to an ongoing investigation under N.J.S.A. 47:1A-3(a).

Later on May 9, 2024, the Complainant e-mailed the Custodian stating that he wished to “amend” his OPRA request to obtain any records the disclosure of which were not inimical to the public interest and those disclosable prior to the commencement of the investigation. The Complainant additionally noted that he was entitled to the “type of crime, time, location, and type of weapon” if no arrest had been made.⁴ The Complainant also asked the Custodian to advise if an arrest was made. On the same day, the Custodian responded stating that her denial under N.J.S.A. 47:1A-3(a) still applied.

¹ No legal representation listed on record.

² Represented by Salvatore J. Siciliano, Esq. and Jennifer McPeak, Esq. of Siciliano & Associates, LLC (Haddonfield, 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.

⁴ This information is typically disclosable under N.J.S.A. 47:1A-3(b); however, with a caveat that same could be withheld “where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release.”

On May 10, 2023, the Complainant responded asserting that it appeared all, or at least some, of the information sought was released to and reported on in the April 27, 2023, edition of “The Retrospect” attached to his e-mail. The Complainant argued that N.J.S.A. 47:1A-3(a) contained an exception requiring the disclosure of records open for public inspection before the investigation commenced. The Complainant thus asked the Custodian to confirm whether the information sought was previously available prior to the investigation and whether the Borough of Haddonfield (“Borough”) released this information to others during the investigation.

Denial of Access Complaint:

On May 15, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access under N.J.S.A. 47:1A-3(a). The Complainant noted that all communications occurred in writing, which he attached to the complaint.

Statement of Information:

On July 12, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 5, 2023. The Custodian certified that her search included contacting the Borough Police Department (“HPD”), who located seven (7) incident reports spanning from April 11, 2023, through May 1, 2023. The Custodian averred that HPD also determined the status of the associated investigations. The Custodian certified that she responded in writing on May 9, 2023, denying access to the subject OPRA request under N.J.S.A. 47:1A-3(a).

The Custodian contended that she lawfully denied access to the responsive incident reports because they were part of an ongoing investigation and were thus exempt under N.J.S.A. 47:1A-3(a). The Custodian noted that the public has not been given access to any of the responsive records, and disclosure would be detrimental to the ongoing investigation.

Additional Submissions:

On February 5, 2025, the GRC sent a request for additional information to the Custodian. The GRC stated that while the Custodian relied on N.J.S.A. 47:1A-3(a) to deny the Complainant’s OPRA request, N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017) provided that a custodian “must show that (1) the requested records ‘pertain to an investigation in progress by any public agency,’ (2) disclosure will ‘be inimical to the public interest,’ and (3) the records were not available to the public before the investigation began.” Id. at 573. The GRC thus sought a certified response to the following:

1. How would disclosure of the records identified in the SOI be “inimical” to the public interest at the time of the OPRA request?
2. Were any of the identified records available to the public prior to the commencement of the investigation?

The GRC requested that the Custodian’s response be submitted no later than February 10, 2025.

On February 10, 2025, the Custodian submitted a response to the GRC's request for additional information. Therein, the Custodian certified that she consulted with the HPD, who advised that disclosure of the incident reports would prejudice the investigation into area burglaries still regularly occurring at the time of the subject OPRA request. The Custodian affirmed that disclosing any information would have harmed HPD's ability to properly investigate the string of burglaries. The Custodian also averred that disclosure at that time would have hindered the current investigation and any additional investigations involving similar crimes and suspects. The Custodian certified that the incidents in question were also being investigated by "an ongoing multi-jurisdictional task force that was controlled by the New Jersey State Police." The Custodian averred that disclosure not only would have hindered HPD's investigation but also jeopardized the current task force investigation.

The Custodian further certified that none of the incident reports were available to the public prior to the commencement of the investigation. The Custodian also certified that, to the best of her knowledge, no parts of the incident reports were released to the public prior to the Complainant's OPRA request.

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 further provides that:

[w]here it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA] may be denied if the inspection, copying or examination of such record or records shall be *inimical to the public interest*; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced.

[N.J.S.A. 47:1A-3(a) (emphasis added).]

In N. Jersey Media Grp., Inc., the Court stated that in order for the exemption to apply, a public agency "must show that (1) the requested records 'pertain to an investigation in progress by any public agency,' (2) disclosure will 'be inimical to the public interest,' and (3) the records were not available to the public before the investigation began." Id. at 573. Further, the Court acknowledged that "[f]ew reported decisions have analyzed the exception" but that those few cases provided that records coming into existence prior to the investigation could not fall under the exemption. Id. at 573-574 (citing Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 367 (App.

Div. 2003); Courier News v. Hunterdon Cnty. Prosecutor's Office, 358 N.J. Super. 373 (App. Div. 2003); and Paff v. Ocean Cnty. Prosecutor's Office, 446 N.J. Super. 163, 189-190 (App. Div. 2016) (rev'd 235 N.J. 1 (2018)).

Also, a public agency has an obligation to disclose certain information regarding a criminal investigation "within 24 hours or as soon as practicable." N.J.S.A. 47:1A-3(b). "Where a crime has been reported, but no arrest made," agencies are required to disclose "information as to the type of crime, time, location and type of weapon, if any." Id. This provision contains a caveat allowing for nondisclosure "where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release." Id.

Here, the Complainant sought access to police reports related to recent burglaries within Tavistock Country Club. The Custodian denied access to multiple incident reports under N.J.S.A. 47:1A-3(a). After attempting to force disclosure of information typically available under N.J.S.A. 47:1A-3(b), which was again denied under N.J.S.A. 47:1A-3(a), the Complainant filed this complaint disputing the Custodian's denial of access. In the SOI, the Custodian certified that HPD identified seven (7) incident reports, all of which were exempt from disclosure under N.J.S.A. 47:1A-3(a). The Custodian argued that the records were not previously released to the public and disclosure would have been detrimental to the investigation.

Finding insufficient evidence on the record to determine the disclosability of the incident reports, the GRC sought additional information on February 5, 2025. The Custodian responded to the GRC's request on February 10, 2025, certifying that disclosure would have been inimical to the public interest and jeopardized an ongoing investigation. Of significant relevance, the Custodian certified that the burglaries were still under investigation by both HPD and a multi-jurisdictional task force. Further, the Custodian averred that disclosure could be detrimental to an investigation that was still ongoing and could hinder any additional investigations concerning similar crimes and suspects. The Custodian also certified that the reports were not available to the public prior to the investigation commencing and had not been disclosed to the public at any point prior to the Complainant's OPRA request.

Upon review, the GRC is persuaded that the Custodian lawfully denied access to the responsive incident reports.⁵ To the first prong of the N. Jersey Media Grp., Inc., test, the Custodian certified that the investigation into these multiple burglaries was still ongoing at the time of the OPRA request. This fact appeared confirmed by the copy of "The Retrospect" the Complainant attached to his complaint: each item involving a Tavistock burglary noted that "[a]n investigation is ongoing." To the second prong, the incidents in question happened in such a tight grouping that a reasonable person may presume them the work of one individual or group. The Custodian's certification that disclosure could hinder current and future investigations into similar crimes and suspects, as well as task force's involvement bolsters the forgoing presumption. Thus, the GRC

⁵ The GRC notes that prevailing case law has routinely held that incident reports concerning criminal investigations are exempt from disclosure under the criminal investigatory exemption at N.J.S.A. 47:1A-1.1. See e.g. Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008); Dalal v. Borough of Paramus (Bergen), GRC Complaint No. 2015-326 (April 2016); De la Cruz v. City of Union City (Union), GRC Complaint No. 2015-14 (Interim Order dated April 25, 2017).

concur that disclosure here would be inimical to the public interest and could absolutely hinder the investigation of not only HPD, but also the multi-jurisdictional task force. To the third prong, the Custodian certified the incident reports were not available to the public prior to the commencement of the investigation.

Regarding the Complainant's attempt to obtain information regarding the criminal investigations under N.J.S.A. 47:1A-3(b), he did not seek same in his original OPRA request. Instead, he attempted to "amend" his OPRA request after the Custodian's denial to include all records available before the commencement of the investigation and certain N.J.S.A. 47:1A-3(b) information from the exempted records. The Custodian continued to rely on N.J.S.A. 47:1A-3(a) as the basis for denial, which mirrors the caveat found in N.J.S.A. 47:1A-3(b). Further, the existence of disclosable information in N.J.S.A. 47:1A-3(b) does not require an agency to disclose a record otherwise exempt from disclosure because of said information's inclusion. See Stockler v. Long Branch Police Dep't (Monmouth), GRC Complaint No. 2020-88 (August 2021) (holding that N.J.S.A. 47:1A-3(b) did not compel a custodian to disclose a record determined to be exempt from disclosure). In fact, the N. Jersey Media Grp., Inc. Court held that "the text simply requires disclosure of 'information'; it does not require an agency to release 'records.'" Id. at 572. Thus, the Complainant's attempt to redirect his OPRA request is of no moment to the Custodian's lawful denial of access.

Accordingly, because the incident reports responsive to the Complainant's OPRA request were the subject of an ongoing investigation by HPD and a multi-jurisdictional task force at the time of the Complainant's OPRA request, the disclosure of which would be inimical to the public interest, they were exempt from disclosure under N.J.S.A. 47:1A-3(a). See N. Jersey Media Grp., Inc., 229 N.J. 541. Thus, the Custodian bore her burden of proof that the incident reports met the "investigation in progress" test necessary to be exempt from disclosure under OPRA. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the incident reports responsive to the Complainant's OPRA request were the subject of an ongoing investigation by the Borough of Haddonfield Police Department and a multi-jurisdictional task force at the time of the Complainant's OPRA request, the disclosure of which would be inimical to the public interest, they were exempt from disclosure under N.J.S.A. 47:1A-3(a). See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017). Thus, the Custodian bore her burden of proof that the incident reports met the "investigation in progress" test necessary to be exempt from disclosure under OPRA. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

April 15, 2025