



State of New Jersey
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Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

August 26, 2025 Government Records Council Meeting

Robert C. Scutro
Complainant

Complaint No. 2023-175

v.

City of Linden (Union)
Custodian of Record

At the August 26, 2025, public meeting, the Government Records Council (“Council”) considered the August 19, 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:

1. Since the responsive global positioning system records contain information regarding “security measures and surveillance techniques” that could create a risk to the parking official and vehicle No. 744 identified in the Complainant’s OPRA request, same are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1, Fano v. N.J. Dep’t of Human Servs., Office of Legal Reg. Affairs, GRC Complaint No. 2012-148 (May 2013). As such, the Custodian has borne his burden of proving a lawful denial of access to the responsive global positioning system records. N.J.S.A. 47:1A-6.
2. The Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant’s OPRA request seeking global positioning system records for the Auxiliary Police vehicle. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA requests exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 26th Day of August 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: August 28, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 26, 2025 Council Meeting**

**Robert C. Scutro¹
Complainant**

GRC Complaint No. 2023-175

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of global positioning system (“GPS”) tracking for parking enforcement vehicle No. 744 and the Auxiliary Police vehicle from May 29, 2023 through present.

Custodian of Record: Joseph C. Bodek
Request Received by Custodian: July 13, 2023
Response Made by Custodian: July 27, 2023
GRC Complaint Received: July 28, 2023

Background³

Request and Response:

On July 13, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 27, 2023,⁴ the Custodian responded in writing denying the OPRA request under the “security measures and surveillance techniques” exemption at N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On July 28, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the Custodian unlawfully denied access to the requested GPS records. The Complainant asserted that the City of Linden (“City”) previously disclosed GPS records to another requestor, which he was aware of because he recommended the individual submit an OPRA request. The Complainant argued that the City could not now apply a “double standard[]” by denying him access.

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary, Giacobbe, Alfieri, Jacobs, LLC (Oakland, 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 The Custodian’s response was on the tenth (10th) business day, which is a “deemed” denial of access. However, the GRC will not address this issue because the Complainant did not raise it.

The Complainant further argued that disclosure would not put any person or property at risk. The Complainant asserted that in 2020 he “exposed” that a City official did not live therein⁵ and he never attempted to commit harm to that official’s person or property. The Complainant contended that the release of GPS records would further support the residency claim. The Complainant also noted that the exemption did not apply because the City uses GPS to track mileage and maintenance needs.

Statement of Information:

On September 29, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 28, 2023. The Custodian certified that his search included forwarding the OPRA request to City Engineer Nicholas Pantina, who identified 153 pages of records for vehicle No. 744. The Custodian affirmed that Ms. Pantina also advised that no GPS device was installed on the Auxiliary Police vehicle. The Custodian certified that he responded in writing on July 27, 2023, denying access under N.J.S.A. 47:1A-1.1.

Regarding vehicle No. 744, the Custodian contended that he lawfully denied access to the responsive GPS data. The Custodian averred that the Council already decided on this issue, holding in Fano v. N.J. Dep’t of Human Servs., Office of Legal Reg. Affairs, GRC Complaint No. 2012-148 (May 2013) that a lawful denial of access to GPS footage occurred. The Custodian argued that like in Fano, disclosure of this information could allow disgruntled ticket recipients to create an increased security risk for the vehicle and its occupant.

Regarding the Auxiliary Police vehicle, the Custodian certified that the City possessed no responsive records. The Custodian thus contended that, pursuant to Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), he could not have unlawfully denied access to a record that did not exist.

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.

GPS for Vehicle No. 744

OPRA provides that: “[a] government record shall not include the following information which is deemed to be confidential . . . security measures and surveillance techniques which, if

⁵ The Complainant does not indicate whether he was able to ascertain the individual’s residence from records obtained under an OPRA request.

disclosed, would create a risk to the safety of persons, property, electronic data or software.” N.J.S.A. 47:1A-1.1.

In Fano, GRC 2012-148, the Council was tasked with determining whether the custodian lawfully denied access to GPS data for a single vehicle over a time period of more than a year under the “security measures and surveillance techniques” exemption. Because this was a novel issue at that time, the Council reviewed cases involving duty logs as a comparable issue:

In Rivera, the complainant sought duty logs for all personnel to include “normal duty and overtime details” The Council, citing to McElwee, *supra*, determined that the responsive records “necessarily include details regarding surveillance techniques and staffing levels.” *Id.* at 18. The Council reached a similar conclusion regarding the disclosure of daily shift schedules. See Durham v. New Jersey Department of Corrections, GRC Complaint No. 2012-35 (March 2013) (holding that disclosure of the schedules could pose a significant risk to the safe and secure operation of the New Jersey State Prison for the reasons raised by the custodian).

[*Id.* at 3.]

Here, the Complainant sought, in part, GPS data for parking enforcement vehicle No. 744 over approximately one and half months. The Custodian denied access under N.J.S.A. 47:1A-1.1 and this complaint ensued. Therein, the Complainant argued that the City previously disclosed similar GPS records, that he was attempting to find proof that a City employee did not reside in the City, and that he has never tried to confront the individual. In the SOI, the Custodian maintained his basis for denial and cited to Fano, GRC 2012-148 in support of it.

Upon review, although the time frame is not as broad as in Fano, access to the GPS data here would still provide a month’s worth of data to cull a pattern allowing anyone to predict the possible position of the vehicle. Disclosure of the records would also provide insight on how to best avoid enforcement while violating parking ordinances. Thus, the records inherently disclose the type of security and surveillance information that is exempt under OPRA. The GRC also finds validity in the Custodian’s concern that disclosure could allow a disgruntled ticket recipient to locate and confront a City parking official with a potentially detrimental outcome.

While the Complainant argued that he would not engage in this activity, the security and surveillance exemption does not contemplate such acts on an individual basis. Rather, the exemption is concerned with whether disclosure would result in jeopardizing the safety and security of, in this case, the City employee or vehicle No. 744. The Complainant’s Denial of Access Complaint assertion that the City previously disclosed GPS data is of no moment here. Even if that unconfirmed disclosure occurred, it does not prohibit the City from relying on the exemption as a lawful basis to deny access in response to other OPRA requests.

Therefore, since the responsive GPS records contain information regarding “security measures and surveillance techniques” that could create a risk to the parking official and vehicle No. 744 identified in the Complainant’s OPRA request, same are exempt from disclosure under

OPRA. N.J.S.A. 47:1A-1.1, Fano, GRC 2012-148. As such, the Custodian has borne his burden of proving a lawful denial of access to the responsive GPS records. N.J.S.A. 47:1A-6.

GPS for Auxiliary Police Vehicle

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer, GRC 2005-49. Here, the Complainant OPRA request sought, in part, GPS records for the Auxiliary Police vehicle. After denying access to the OPRA request in its entirety, the Custodian certified in the SOI that Mr. Pantina advised that no GPS tracker was placed on the vehicle and thus no records existed. Upon review, the GRC is persuaded that no unlawful denial of access has occurred because the evidence of record supports that no records exist. The Custodian has certified that no records existed, and the Complainant has not provided any evidence to refute this certification. Thus, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant's OPRA request seeking GPS records for the Auxiliary Police vehicle. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to these OPRA requests exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Since the responsive global positioning system records contain information regarding "security measures and surveillance techniques" that could create a risk to the parking official and vehicle No. 744 identified in the Complainant's OPRA request, same are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1, Fano v. N.J. Dep't of Human Servs., Office of Legal Reg. Affairs, GRC Complaint No. 2012-148 (May 2013). As such, the Custodian has borne his burden of proving a lawful denial of access to the responsive global positioning system records. N.J.S.A. 47:1A-6.
2. The Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant's OPRA request seeking global positioning system records for the Auxiliary Police vehicle. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA requests exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Executive Director

August 19, 2025