



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

April 28, 2026 Government Records Council Meeting

Kevin Kearns
Complainant

Complaint No. 2023-222

v.

Borough of New Providence (Union)
Custodian of Record

At the April 28, 2026, public meeting, the Government Records Council (“Council”) considered the April 21, 2026, 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. The current Custodian has borne her burden of proof that a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). The current Custodian has also borne her burden of proof that the special service charge was reasonable. See N.J.S.A. 47:1A-6. Thus, the current Custodian shall cause the Captain to review, redact (if applicable), and disclose to the Complainant the responsive records upon remittance of the corrected special service charge of \$563.78.
2. **The Complainant shall comply with conclusion No. 1 above within ten (10) business days from receipt of this Order by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Should the Complainant remit payment, the Custodian shall provide access to the responsive records within twenty (20) business days following receipt of said payment.**
3. **In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 April 2026

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: April 30, 2026

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2026 Council Meeting**

Kevin Kearns¹
Complainant

GRC Complaint No. 2023-222

v.

Borough of New Providence (Union)²
Custodial Agency

Records Relevant to Complaint: Electronic copies of Body worn camera (“BWC”) and in-car camera (“dash”) footage for all police personnel involved in the initial stop, detention investigation and arrest in a driving while intoxicated (“DWI”) incident on July 16, 2023.³

Custodian of Record: Jessica Short⁴

Request Received by Custodian: August 28, 2023

Response Made by Custodian: September 6, 2023

GRC Complaint Received: September 14, 2023

Background⁵

Request and Response:

On August 28, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 6, 2023, an unidentified individual from the Borough of New Providence (“Borough”) responded in writing advising that a special service charge of \$566.09 was assessed in accordance with N.J.S.A. 47:1A-5(c) to review and redact six (6) responsive recordings. The same day, the Complainant requested additional details on how the fee of \$566.09 was calculated. The Custodian responded that there were six (6) total videos (fleet and body worn camera) that totaled over three and a half hours (3.5), hourly rate who can review and redact the footage. The Complainant sought further clarification of this response, asking the Custodian whether the \$566.09 fee consisted of 3.5 hours of labor at a rate of \$161.74 per hour. The Custodian responded that it was approximately 3.5 hours of total videos between the different videos, not 3.5 hours of labor. The Complainant again sought

¹ No legal representation listed on record.

² Represented by Paul R. Rizzo of DiFrancesco Bateman (Warren, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ In the Denial of Access Complaint, the Complainant named Jessica Short as the “Custodian of Record.” The current “Custodian of Record” is Wendy Barry.

⁵ 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.

clarification on how many hours of labor it would take the Borough to review the requested videos and the hourly rate of the person conducting the review.

On September 7, 2023, Custodian's Counsel informed the Complainant that there were 3.38 hours of video footage responsive to the Complainant's request and that it would take the Borough's captain, Captain Stephen Drown twice the amount of hours to review the videos. Accordingly, the charge would be for 6.76 hours, at the rate of \$83.40 per hour, which equates to the corrected charge of \$563.78. On the same day, the Complainant rejected the Borough's special service charge and argued that the Borough failed to justify it. Specifically, the Complainant argued that recordings made in public do not have any expectation of privacy or include other exempt information. The Complainant thus contended that 3.38 hours of footage amounting to 6.76 hours of labor is arbitrary and subjective. The Complainant also stated that Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002), required custodians to assess a special service charge based on a specific analysis. The Complainant noted that the GRC created a 14-point analysis based on Courier Post and that the Borough could not rely on the Captain's experience to estimate the charge. The Complainant further argued that the GRC has never approved of a special service charge when less than ten (10) hours of labor is involved in processing the OPRA request. The Complainant stated that, in Carter v. Franklin Fire District No. 1, GRC Complaint No. 2013-281, *et seq.* (Interim order dated October 28, 2014), the GRC held that no special charge was warranted for eight (8) hours of time to search for emails. The Complainant also maintained that N.J.S.A. 47:1A-5(c) applies only to printed matters, which does not apply to his OPRA request.

On September 8, 2023, Custodian's Counsel sent a letter to the Complainant stating that a special service charge is applicable to OPRA requests seeking video footage. Counsel argued that Carter, GRC 2013-281, *et seq.* addressed e-mails and a charge associated with attorney redaction; thus, the Complainant simplified and misplaced its application here. Counsel, citing N.J.S.A. 47:1A-5(d), and Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009), argued that a special service charge was appropriate where a record is not maintained in the medium sought or requires substantial manipulation or programming. Counsel further noted that a special service charge may be warranted where the work performed is mostly manual. Counsel noted that here, the Borough is a small municipality with a small police department wherein only the Captain possesses the training required to review and potentially redact the responsive recordings. Custodian's Counsel also reiterated that there were three (3) different videos relevant to the Complainant's request, which included the arrest video and two additional videos. If the Complainant only sought the arrest video, the fee would be reduced to \$321.92.

Denial of Access Complaint:

On September 14, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that, on August 28, 2023, he submitted the above-mentioned OPRA request to the Borough. The Complainant asserted that, on September 6, 2023, he received an email from the Borough indicating that due to that nature of his request a fee of \$566.09 must be received before the request could be successfully fulfilled. The Complainant stated the Borough cited N.J.S.A. 47:1A-5(c) as the basis for the charge and further indicated that the fee was for the review and redactions of six (6) videos from fleet and BWC

footage. The Complainant stated, that after multiple correspondence between himself and the Borough, he rejected the proposed special service charge, which Custodian's Counsel noted in his September 8, 2023 letter was actually \$563.78.

The Complainant asserted the Borough did not know how many redactions were required because they have not reviewed the footage requested. The Complainant maintained the Borough did not need an outside vendor as they utilize Axon Body Camera, on which the Captain is trained to use. The Complainant also argued that if a special service charge is required for this one BWC/MVR request, then agencies would be allowed to charge a fee in every case. Moreover, the Complainant averred that Custodian's Counsel inappropriately cited Burnett in his September 8, 2023 letter here.

Statement of Information:

On October 2, 2026, the current Custodian filed a Statement of Information ("SOI"). The current Custodian certified the Borough received the Complainant's OPRA request on August 28, 2023. The current Custodian certified that the Borough responded in writing on September 6, 2023, assessing a special service charge of \$566.09 to fulfill his OPRA request. The current Custodian certified that, while engaging the Complainant regarding the charge, Custodian's Counsel noted that the actual assessed charge was for 6.76 hours at the rate of \$83.40 per hour which equates to \$563.78. The current Custodian also asserted that the Complainant was advised that the special fee charge would be reduced if he was only seeking the arrest video of his request. The current Custodian stated that the Complainant rejected the assessed special service charge and filed the instant complaint.

The current Custodian argued that contrary to the Complainant's arguments the special service charge fee is not limited to production of paper documents. The current Custodian argued that, instead, OPRA allows agencies to assess a special service charge under N.J.S.A. 47:1A-5(d) where disclosure requires a substantial amount manipulation or programming of information technology. The current Custodian contended that the New Jersey Supreme Court in Gilleran v. Bloomfield, 227 N.J. 159 (2016), held that a special service charge would be appropriate when a public entity is required to review security-system videotapes to excise portions depicting a person whose safety might be at risk. Id. at 176. The current Custodian also certified that the Borough advised the Complainant of the factors it used to determine whether the Complainant's request involved an extraordinary expenditure of time requiring a special service charge. The current Custodian averred that those factors included the fact that the Borough is a small town with a relatively small police department compared to other New Jersey communities and that the Captain is the only officer specifically trained to handle requests for records. Moreover, the current Custodian asserted that the special service charge was warranted because the work involved was largely manual, and the responsive recordings required review and redaction. The current Custodian additionally argued the Borough cannot be expected to have an officer spend over six (6) hours of time to accommodate a records request without being permitted to impose an appropriate special service charge, and that therefore the Borough is entitled to impose the charge.

Additional Submissions:

On April 3, 2025, the GRC requested a 14-point analysis from the Borough. On April 7, 2025, the Borough's Clerk, Denise Brinkofski, submitted the 14-point analysis to the GRC, responding as follows:

1. **What records are requested?**

Response: The records requested were body-worn and in-car camera footage related to a DWI stop which consisted of six separate pieces of video evidence.

2. **Give a general nature description and number of the government records requested.**

Response: The total footage requested consists of 3.38 hours of video footage.

3. **What is the period of time over which the records extend?**

Response: The total time of the initial stop was 36 minutes.

4. **Are some or all of the records sought archived or in storage?**

Response: The records sought are stored electronically on Evidence.com.

5. **What is the size of the agency (total number of employees)?**

Response: The Borough Police Department consisting of 26 full-time officers at the time of the request consisting of 16 patrol officers, two traffic officers, four detectives, and four ranking members who performed duties as administrators consisting of a chief, captain, and two lieutenants.

6. **What is the number of employees available to accommodate the records request?**

Response: One.

7. **To what extent do the requested records have to be redacted?**

Response: The full videos must be reviewed to determine the extent of redaction necessary.

8. **What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?**

Response: The work is performed by Captain, whose hourly rate is \$83.40. Based upon the size of the Police Department, and the availability of personnel qualified to handle

redactions in a timely fashion, access to the redaction module within the server must be permissioned to administrative personnel. This access control maintains evidence continuity and the integrity of the system. Information contained in body-worn cameras must be protected for many different reasons (involvement of a juvenile, domestic violence, privacy issues, security issues, etc.). The accountability and liability of providing information falls on the administrative staff. The Police Department does not permit civilian access to the evidence system. It was estimated that Captain would spend 6.76 hours reviewing the six pieces of footage, making any necessary redactions, and reviewing the total footage again to ensure proper redaction has been made.

9. **What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?**

Response: See response to No. 8.

10. **What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records to their original storage place?**

Response: See response to No. 8.

11. **What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?**

Response: See response to No. 8. In addition, Captain is the only officer assigned in handling review and redaction of OPRA requests as he was the only officer, other than the Chief of Police, OPRA trained on redactions and exceptions.

12. **Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?**

Response: Captain at \$83.40 per hour.

13. **What is the availability of information technology and copying capabilities?**

Response: The record and evidence is readily available

14. **Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.**

Response: At the time of the request, Captain estimated that for every hour of footage, it would take approximately two hours to review and redact.

Analysis

Special Service Charge

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.

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies

[Id. (emphasis added).]

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case-by-case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post, 360 N.J. Super. 199. There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that, in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

In Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012), the complainant sought in part motor vehicle recording MVR footage from the Rutgers University Police Department (“RUPD”). The custodian certified that there was one (1) out of the seventy-five (75) employees qualified to fulfill the complainant’s OPRA request. The employee certified that he spent approximately twelve (12) hours fulfilling the entire request, but RUPD charged only for the two (2) hours spent locating and copying the requested MVR footage on his work computer. The employee also certified that while creating a copy of the footage, he was unable to perform any other work on his computer. The Council held that the disruption to the employee’s regular duties, as well as the fact that RUPD did not charge the entire time expended to fulfill the request, warranted the special service charge.

In complaints where the GRC is tasked with addressing a special service charge dispute, it must decide first whether the charge was warranted. If the GRC reaches a conclusion that the charge was warranted, then it must address whether the fee was reasonable. See, e.g., Rivera, GRC 2009-311; Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015).

Here, Ms. Brinkofski provided a 14-point analysis that reflects the GRC’s analytical framework outlined in Courier Post, 360 N.J. Super. 199, regarding the proper assessment of a special service charge. The Complainant’s OPRA request sought BWC and dash footage for all police personnel involved in the initial stop, detention, investigation, and arrest related to a DWI stop on July 16, 2023. Ms. Brinkofski certified the footage requested consisted of six (6) videos, which totaled 3.38 hours of video footage, which would be reviewed by the Captain, whose hourly rate is \$83.40. She estimated that the Captain would spend 6.76 hours reviewing the six (6) videos for a corrected total of \$563.78. Ms. Brinkofski also certified the full videos must be reviewed to determine the extent of redaction necessary and that the Captain estimated that every hour of footage would take approximately two (2) hours to review and redact.

In first determining whether the assessed charge was warranted, the GRC is persuaded that the facts here are like those in Rivera, GRC 2009-311. Ms. Brinkofski’s 14-point analysis and SOI provide comparable facts. The individual in Rivera spent twelve (12) hours fulfilling the entire request, while here the Captain is estimated to spend approximately 6.76 hours exclusively reviewing and redacting the requested footage. Based on the foregoing, the GRC is persuaded that a special service charge is warranted here.

Now that the GRC has determined that a special service charge is warranted here, it must determine whether the total proposed corrected charge of \$563.78 was reasonable. In Courier Post, 360 N.J. Super. at 204, the court held that it would be appropriate to calculate the hourly wage rates of the clerical and professional staff involved in satisfying a request and multiplying those figures by the total hours spent, assuming that the custodian can prove that the professional level

of human resource was needed to fulfill the request. Thus, as part of the calculation of a special service charge, a custodian must prove that same was based upon the lowest paid, qualified employee's hourly rate to perform the work required to respond to the subject OPRA request.

Here, the special service charge of \$563.78 reflects the 6.76 hours of time for the Captain to review and redact the responsive records at an hourly rate of \$83.40. In determining that the assessed fee is reasonable, the GRC relies on Rivera, GRC 2009-311, the current Custodian's SOI certification, and Ms. Brinkofski's 14-point analysis. The certifications support that the Captain is the only employee with authorization and the training necessary to access, review, and redact the responsive records. Additionally, the Captain would have to spend 6.76 hours of time to accommodate the Complainant's request. Also, the Complainant's assertion that recordings taken in public have no reasonable expectation of privacy is incorrect, as it fails to account for multiple privacy exemptions under OPRA that apply to such recordings. See N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-1.1. Thus, the GRC is persuaded that the assessed special service charge of \$563.78 for 6.76 hours the Captain needs to review and redact the requested footage is reasonable.

Accordingly, the current Custodian has borne her burden of proof that a special service charge is warranted here. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. 191; Rivera, GRC 2009-311. The current Custodian has also borne her burden of proof that the special service charge was reasonable. See N.J.S.A. 47:1A-6. Specifically, charging \$563.78 for the Captain to perform 6.76 hours of work is reasonable. Id. Thus, the current Custodian shall cause the Captain to review, redact (if applicable), and disclose to the Complainant the responsive records upon remittance of the corrected special service charge of \$563.78.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The current Custodian has borne her burden of proof that a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). The current Custodian has also borne her burden of proof that the special service charge was reasonable. See N.J.S.A. 47:1A-6. Thus, the current Custodian shall cause the Captain to review, redact (if applicable), and disclose to the Complainant the responsive records upon remittance of the corrected special service charge of \$563.78.
2. **The Complainant shall comply with conclusion No. 1 above within ten (10) business days from receipt of this Order by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Should the Complainant remit payment, the Custodian shall provide access to the responsive records within twenty (20) business days following receipt of said payment.**

3. **In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

Prepared By: Rose-Valda Julceus
Staff Attorney

April 21, 2026