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DEPARTMENT OF COMMUNITY AFFAIRS  
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JACQUELYN A. SUÁREZ  
*Commissioner*

## FINAL DECISION

### August 26, 2025 Government Records Council Meeting

Brian McMillan  
Complainant

Complaint No. 2023-283

v.

Borough of Cliffside Park (Bergen)  
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. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The responsive body-worn camera footage is exempt from disclosure under N.J.S.A. 40A:14-118.5(l)(1) because it was subject to the 180-day minimum retention period requirement. Further, the Complainant has failed to provide evidence supporting that the body-worn camera footage was subject to any additional retention periods. Thus, the Custodian lawfully denied access to the footage. 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 26<sup>th</sup> 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**

**Brian McMillan<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-283**

**v.**

**Borough of Cliffside Park (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Pickup of body-worn camera (“BWC”) footage from Officer Zoklu and all other officers on scene at the Complainant’s August 21, 2023, traffic stop.<sup>3</sup>

**Custodian of Record:** Sercan Zoklu

**Request Received by Custodian:** October 2, 2023

**Response Made by Custodian:** October 17, 2023

**GRC Complaint Received:** November 13, 2023

**Background<sup>4</sup>**

**Request and Response:**

On October 1, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 2, 2023, Executive Assistant Allison Lee Conner e-mailed the Complainant acknowledging receipt of his OPRA request. On October 11, and 13, 2023, the Complainant e-mailed Ms. Conner seeking a status update on his OPRA request.

On October 17, 2023, the tenth (10<sup>th</sup>) business day after receipt of the OPRA request, Ms. Conner responded in writing on behalf of the Custodian extending the response time frame through October 31, 2023, noting that records becoming available before that date will be disclosed via e-mail. On the same day, the Complainant questioned whether the extension was necessary. Ms. Conner responded via e-mail later that day, attaching a response letter from the Custodian disclosing mobile video recordings but denying access to the requested BWC footage pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 40A:14-118.5(l)(1), and New Jersey Attorney General (“AG”) Directive 2022-1, § 8 and 10. Ms. Conner stated that the Complainant’s OPRA request was

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

<sup>2</sup> Represented by Christine Gillen, Esq., of Diktas, Gillen, P.C. (Cliffside Park, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</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.

“fulfill[ed].” The Complainant responded objecting to his request being complete, advising that Ms. Conner failed to address the BWC portion of his OPRA request. On October 19, 2023, Ms. Conner responded via e-mail highlighting the portion of the October 17, 2023 letter denying access to the requested BWC footage.

#### Denial of Access Complaint:

On November 13, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that after the Borough of Cliffside Park (“Borough”) failed to respond to his OPRA request, he reached out on three (3) occasions seeking an update. The Complainant stated that he talked to Ms. Conner via telephone on October 17, 2023, which he recorded, wherein she advised that she was having e-mail issues and had been in and out of the office but that she would respond by requesting an extension by the end of the day. The Complainant asserted that Ms. Conner finally responded on October 19, 2023,<sup>5</sup> extending the response time frame through October 31, 2023. The Complainant contended that thereafter, Ms. Conner denied access to the requested BWC footage.

The Complainant stated that he went to the Township Police Station to file an internal affairs (“IA”) report and was denied the opportunity on the basis that he “did not meet the criteria.” The Complainant argued that he was not advised of the criteria as of November 3, 2023. The Complainant contended that the BWC footage is critical because it memorialized the statements made by officers at the August 21, 2023, traffic stop that resulted in him receiving tickets.

#### Statement of Information:

On December 22, 2023, the Custodian filed a Statement of Information (“SOI”) attaching legal certifications from Ms. Conner, Lieutenant William Crapara, and Sergeant Jonathan Petermann. The Custodian certified that he received the Complainant’s OPRA request on October 2, 2023. The Custodian affirmed that his search included Ms. Conner forwarding the request to Cliffside Park Police Department (“CPPD”) on October 3, 2023. See Conner Cert. ¶ 4. The Custodian certified that Ms. Conner responded in writing on his behalf on October 17, 2023, extending the response time frame before ultimately denying access to the responsive BWC footage later that day. See Conner Cert. ¶ 7-8. The Custodian affirmed that on November 3, 2023, the Complainant came to the Police Station and spoke with Sgt. Spoto and Officer Romano “regarding his dissatisfaction” with the denial of access. See Petermann Cert. ¶ 5 The Custodian certified that the Complainant did not file an IA complaint. See Crapara Cert. ¶ 2.

The Custodian first argued that OPRA allows a custodian to seek an extension of time to a date certain. N.J.S.A. 47:1A-5(i)(1). The Custodian contended that here, Ms. Conner timely requested an extension of time to respond to a date certain both orally and in writing on October 17, 2023. The Custodian noted that Ms. Conner was experiencing e-mail issues that she believed impacted on her communications with CCPD. Conner Cert. ¶ 6; Petermann Cert. ¶ 3-4. The Custodian further noted that, after speaking with the Complainant, Ms. Conner obtained the

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<sup>5</sup> This date is inconsistent with the attachments included in the Denial of Access Complaint, which show that Ms. Conner sent an e-mail obtaining an extension on October 17, 2023 and not October 19, 2023.

extension and contacted CCPD. Conner Cert. ¶ 7-8. The Custodian further contended that Ms. Conner subsequently responded on that exact date.

The Custodian next argued that the Borough lawfully denied access to BWC footage from two (2) officers pursuant to N.J.S.A. 40A:14-118.5 and AG Directive 2022-1. The Custodian stated that to the former, N.J.S.A. 40A:14-118.5 provides for basic retention requirements applicable to BWC footage. The Custodian argued that the BWC footage sought here is not subject to OPRA per N.J.S.A. 40A:14-118.5(j), which provides that footage subject to the 180-day retention period is exempt from disclosure. The Custodian further affirmed that none of the conditions requiring an “additional retention period” exist here as provided for in N.J.S.A. 40A:14-118.5(j)(1)-(3), especially where the Complainant has not filed an IA complaint. See Crapara Cert. ¶ 2. The Custodian further argued that, even if an IA complaint were filed, it would have post-dated the OPRA request and thus had no impact on the Borough’s response. As to the latter point, the Custodian noted that AG policy directives carry the force of law pursuant to O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). The Custodian contended that AG Directive 2022-1, §§ 8 and 10.1 are consistent with the provisions of N.J.S.A. 40A:14-118.5. The Custodian thus contended that reliance on AG Directive 2022-1 presented a second lawful basis for denial.<sup>6</sup>

### Analysis

#### Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).<sup>7</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

Here, the Complainant submitted his OPRA request via e-mail on the night of October 1, 2023. Thereafter, upon not receiving a response, the Complainant contacted the Borough on October 11, 13, and 17, 2023. Ms. Conner subsequently responded in writing on the Custodian’s behalf on October 17, 2023, extending the response time frame through October 31, 2023. Ms. Conner later responded on the same day denying access to the responsive BWC footage. This complaint ensued. The Complainant argued in part that he attempted to compel a response on multiple occasions. In the SOI, the Custodian certified that he received the OPRA request on

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<sup>6</sup> The Custodian also argued that the Complainant was not eligible for prevailing party attorney’s fees per Barkley v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2012-34 (May 2013). While OPRA is clear that a *pro se* litigant is not eligible for prevailing party attorney’s fee, the GRC does not reach this issue because the Complainant, a *pro se* litigant, did not seek such an award.

<sup>7</sup> A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

October 2, 2023. and subsequently responded twice through Ms. Conner on October 17, 2023. The Custodian thus contended that Ms. Conner timely and properly responded to the Complainant's OPRA request. The GRC disagrees.

Contrary to the Custodian's SOI assertion, Ms. Conner's October 17, 2023 response was on the tenth (10<sup>th</sup>) business day after receipt of the OPRA request. Thus, at the time of Ms. Conner's response seeking an extension, the OPRA request was already "deemed" denied under N.J.S.A. 47:1A-5(i)(1), which required a response within seven (7) business days. Based on the foregoing, the Custodian violated OPRA's applicable response provision.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

### **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 provides that:

The provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; *any other statute*; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor . . . any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

New Jersey's BWC Law ("BWCL") provides that BWC footage "shall be retained for not less than 180 days from the date it was recorded, which minimum time frame for retention shall be applicable to all contracts for retention of body worn camera recordings executed by or on behalf of a law enforcement agency." N.J.S.A. 40A:14-118.5(j). However, this section also includes several instances where BWC footage "shall be subject to . . . additional retention periods." Id. These instances, which extend the retention period to a minimum of three (3) years, include encounters where a recorded subject registers a complaint, footage which has been voluntarily requested to be retained for the extended period, or when it pertains to a criminal investigation or related civil proceeding. Id. at (1)-(3). The BWCL also provides that, "to effectuate subparagraphs (e), (f), and (g) of paragraph (2) of subsection j. of this section, the member of the public, parent or legal guardian, or next of kin or designee shall be permitted to review the body

worn camera recording in accordance with [OPRA] to determine whether to request a three-year retention period.” N.J.S.A. 40A:14-118.5(k).

The BWCL provides for a clear disclosure standard connected to the above retention periods as follows:

Notwithstanding that a criminal investigatory record does not constitute a government record under [OPRA] *only the following body worn camera recordings shall be exempt from public inspection:*

- (1) *body worn camera recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection j. of this section.*
- (2) body worn camera recordings subject to a minimum three-year retention period solely and exclusively pursuant to paragraph (1) of subsection j. of this section if the subject of the body worn camera recording making the complaint requests the body worn camera recording not be made available to the public;
- (3) body worn camera recordings subject to a minimum three-year retention period solely and exclusively pursuant to subparagraph (a), (b), (c), or (d) of paragraph (2) of subsection j. of this section; and
- (4) body worn camera recordings subject to a minimum three-year retention period solely and exclusively pursuant to subparagraph (e), (f), or (g) of paragraph (2) of subsection j. of this section if a member, parent or legal guardian, or next of kin or designee requests the body worn camera recording not be made available to the public.

[N.J.S.A. 40A:14-118.5(l) (emphasis added).]

Here, the Complainant sought access to BWC footage from an August 21, 2023, traffic stop involving himself, and was denied access under N.J.S.A. 40A:14-118.5(l)(1). This complaint followed, wherein the Complainant contended that he needed the records to provide the basis for an IA complaint that he was told by CCPD did not meet the criteria for filing such a complaint. In the SOI, the Custodian maintained his position that the requested BWC footage was not subject to additional retention periods and a lawful denial of access occurred. The Custodian and Lt. Crapara also certified that the Complainant did not file or have an active IA complaint at the time of his OPRA request.

Upon review, a plain reading of the BWCL provides that any BWC footage subject to the 180-day minimum retention period is not subject to disclosure. N.J.S.A. 40A:14-118.5(l)(1). Such an exemption is recognizable under OPRA through N.J.S.A. 47:1A-9(a). Applying this standard to the footage sought here, the GRC is persuaded that no unlawful denial of access occurred. Specifically, the Custodian has certified that the footage was subject to the 180-day retention period. Further, the Custodian and Lt. Crapara certified that the Complainant did not meet any of the conditions by which the mandatory minimum retention period would be extended to three (3) years. N.J.S.A. 40A:14-118.5(j). Further, and contrary to the Complainant’s assertion that as to why he needed the footage, he has confirmed, and the Borough has provided multiple certifications

that no IA complaint was filed or active at the time of the OPRA request. Also, the Complainant failed to show that the requested BWC footage fell within one of the exceptions requiring additional retention. Based on the foregoing, the GRC discerns no evidence to disturb the Custodian's denial here.

Accordingly, the responsive BWC footage is exempt from disclosure under N.J.S.A. 40A:14-118.5(l)(1) because it was subject to the 180-day minimum retention period requirement. Further, the Complainant has failed to provide evidence supporting that the BWC footage was subject to any additional retention periods. Thus, the Custodian lawfully denied access to the footage. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The responsive body-worn camera footage is exempt from disclosure under N.J.S.A. 40A:14-118.5(l)(1) because it was subject to the 180-day minimum retention period requirement. Further, the Complainant has failed to provide evidence supporting that the body-worn camera footage was subject to any additional retention periods. Thus, the Custodian lawfully denied access to the footage. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

August 19, 2025