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

JACQUELYN A. SUÁREZ  
*Commissioner*

## FINAL DECISION

### August 26, 2025 Government Records Council Meeting

Gina Pope  
Complainant

Complaint No. 2023-285

v.

Borough of Merchantville  
Police Department (Camden)  
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 failed to show that the responsive body-worn camera footage was exempt from disclosure under the “investigation in progress” exemption. N.J.S.A. 47:1A-3(a). Specifically, the Custodian did not provide arguments or evidence that an investigation was ongoing and further failed to argue that disclosure would be inimical to the public interest. N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 573-574 (2017); Colvell v. Hightstown Police Dep’t (Mercer), GRC Complaint No. 2019-134 (March 2021). Thus, the Custodian shall disclose the responsive body-worn camera footage to the Complainant, with redactions where applicable and lawful under OPRA.
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council’s Final Decision. 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 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**

**Gina Pope<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-285**

**v.**

**Borough of Merchantville<sup>2</sup>  
Police Department (Camden)  
Custodial Agency**

**Records Relevant to Complaint:** Copies of body-worn camera (“BWC”) footage from Detective Stephen Morrone, Jr. and Officer John McQueen from visit to a specific address “prompted by [Division of Child Protection and Permanency]” on October 9, 2023.

**Custodian of Record:** Denise L. Brouse  
**Request Received by Custodian:** November 6, 2023  
**Response Made by Custodian:** November 13, 2023  
**GRC Complaint Received:** November 16, 2023

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

**Request and Response:**

On November 6, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 13, 2023, the Custodian responded in writing forwarding an e-mail from Chief Richard J. Grassia stating that after conferring with the Borough of Merchantville’s (“Borough”) attorney, responsive BWC footage is exempt from disclosure under N.J.S.A. 47:1A-3(a) due to an ongoing investigation.

**Denial of Access Complaint:**

On November 16, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial, arguing that the Merchantville Police Department (“MPD”) never opened, and was not conducting, an investigation. The Complainant, citing N.J.S.A. 47:1A-3(a), contended that, even if MPD had

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

<sup>2</sup> Represented by Timothy J. Higgins, Esq., of Law Offices of Timothy J. Higgins (Haddonfield, 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.

been conducting an investigation, the Borough failed to prove that disclosure of the BWC footage would be “inimical to the public interest.”

### Statement of Information:

On November 28, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 6, 2023. The Custodian certified that she contacted MPD, who located responsive BWC footage and determined its exemption status due to an ongoing investigation. The Custodian certified that she responded in writing on November 14, 2023<sup>4</sup> denying access to the responsive BWC footage based on Chief Grassia’s assertion of the ongoing investigation exemption at N.J.S.A. 47:1A-3(a).

The Custodian maintained that she lawfully denied access to the responsive BWC footage due to an “open and active” investigation.

### 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 provides that:

Notwithstanding the provisions of [OPRA] where 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).]

In N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017), the Court noted that section 3(a) has seen little analysis in published decisions, stating:

In Serrano v. South Brunswick Township, 358 N.J. Super. 352, 367 (App. Div. 2003), the Appellate Division rejected a claim that the release of a 9-1-1 tape could

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<sup>4</sup> The GRC notes that both the Complainant and Custodian identified November 14, 2023, as the response date. However, the Custodian’s response e-mail attached to the Denial of Access Complaint clearly shows that it was sent at 12:05 p.m. on November 13, 2023

make it difficult to impanel a jury in a murder case and might call for a change of venue. Even if that were to happen, the panel observed, the “inconveniences to the prosecutor” did not make disclosure “inimical to the public interest.” Ibid. The panel also initially noted that the tape “was created hours before the police investigation began” and was “open for public inspection” at that time. Id. at 366, 817 A.2d 1004 (quoting N.J.S.A. 47:1A-3(a)). Section 3(a) expressly carves that type of record out of the ongoing investigations exception.

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[I]n [Paff v. Ocean Cnty. Prosecutor’s Office, 446 N.J. Super. 163, 189-90 (App. Div. 2016)], the Appellate Division briefly addressed section 3(a). In light of the facts of the case, which are discussed above, a majority of the panel found that the MVR recordings preceded any investigation and that their release would not be inimical to the public interest.

[Id. at 573-574.]

In summary, the Court found that the custodian must demonstrate that disclosure of the record will “be inimical to the public interest” as set forth in N.J.S.A. 47:1A-3(a). To this end, in Colvell v. Hightstown Police Dep’t (Mercer), GRC Complaint No. 2019-134 (March 2021), the custodian denied access to multiple records under N.J.S.A. 47:1A-3(a). The Council held that, because the custodian “did not elaborate further beyond the initial claim,” she “failed to show that disclosure of the records would be ‘inimical to the public interest’ and hinder the course of the investigation.” Id. at 8 (citing N. Jersey Media Grp., Inc., 229 N.J. at 573-74).<sup>5</sup>

Here, the Complainant sought access to BWC footage for a home visit occurring on October 9, 2023. The Custodian responded denying access under N.J.S.A. 47:1A-3(a). This complaint followed, wherein the Complainant argued that MPD never opened an investigation into the incident. The Complainant further argued that the Custodian did not support that disclosure would be inimical to the public interest. In the SOI, the Custodian maintained her position that she lawfully denied access to the responsive footage. However, the Custodian did not counter the Complainant’s “inimical” assertion.

As noted above, whenever a requestor files a Denial of Access Complaint, a custodian bears the burden of proving a lawful denial of access. Here, the Custodian failed to do so. The record is devoid of any affirmative indication of an investigation in progress. Further, the Custodian failed to include any argument indicating how or why disclosure of the responsive BWC footage would be inimical the public interest. Finally, the Custodian did not assert any other exemption that may apply to the records in question. Based on this, the GRC is persuaded that an unlawful denial of access occurred.

Accordingly, the Custodian failed to show that the responsive BWC footage was exempt from disclosure under the “investigation in progress” exemption. N.J.S.A. 47:1A-3(a).

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<sup>5</sup> The Council subsequently determined that some of the requested records were unlawfully denied and ordered disclosure thereof.

Specifically, the Custodian did not provide arguments or evidence that an investigation was ongoing and further failed to argue that disclosure would be inimical to the public interest. N. Jersey Media Grp., Inc., 229 N.J. at 573-574; Colvell, GRC 2019-134. Thus, the Custodian shall disclose the responsive BWC footage to the Complainant, with redactions where applicable and lawful under OPRA.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to show that the responsive body-worn camera footage was exempt from disclosure under the “investigation in progress” exemption. N.J.S.A. 47:1A-3(a). Specifically, the Custodian did not provide arguments or evidence that an investigation was ongoing and further failed to argue that disclosure would be inimical to the public interest. N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 573-574 (2017); Colvell v. Hightstown Police Dep’t (Mercer), GRC Complaint No. 2019-134 (March 2021). Thus, the Custodian shall disclose the responsive body-worn camera footage to the Complainant, with redactions where applicable and lawful under OPRA.
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Prepared By: Frank F. Caruso  
Executive Director

August 19, 2025