



PHILIP D. MURPHY  
Governor

TAHESHA L. WAY  
Lieutenant Governor

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

JACQUELYN A. SUÁREZ  
Commissioner

## FINAL DECISION

### March 25, 2025 Government Records Council Meeting

Katalin Gordon  
Complainant

Complaint No. 2023-89

v.

Township of Montclair (Essex)  
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 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 has borne her burden of proof that she lawfully denied access to the portion of the Complainant’s OPRA request seeking an incident report in relation to Ticket No. 004791. Specifically, Ms. Allen responded, the Custodian certified in the Statement of Information, and the record reflects, that no incident reports responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. Although the Custodian, through Ms. Allen, initially denied the request on the basis that no records existed, a subsequent discovery request revealed that body-worn camera footage did exist. Further, there is no evidence in the record to support that same was exempt from disclosure and should not have been disclosed to the Complainant. Thus, the Custodian unlawfully denied access to the portion of the Complainant’s OPRA request seeking video footage related to Ticket No. 004791. See N.J.S.A. 47:1A-6. In the absence of evidence indicating that disclosure occurred, the Custodian shall disclose the responsive recording to the Complainant.
3. **The Custodian shall comply with conclusion No. 2 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).**
4. Although the Custodian unlawfully denied access to the requested body-worn camera footage, she did not unlawfully deny access to the requested incident reports because none existed. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of

a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 25<sup>th</sup> Day of March 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: March 27, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 25, 2025 Council Meeting**

**Katalin Gordon<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-89**

**v.**

**Township of Montclair (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the incident report related to Ticket No. 004791 and any video of the incident occurring on January 30, 2023, between 8:00 a.m. and 10:30 a.m.

**Custodian of Record:** Angelese Bermudez Nieves  
**Request Received by Custodian:** February 7, 2023  
**Response Made by Custodian:** February 14, 2023  
**GRC Complaint Received:** April 19, 2023

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

**Request and Response:**

On February 7, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 14, 2023, Principal Clerk Jacqueline Allen from the Montclair Police Department (“MPD”) responded in writing on behalf of the Custodian seeking clarification because she could not locate records based solely on the ticket number. On February 15, 2023, the Complainant responded providing clarification, including the ticket prefix, location, and exact time of the incident.

On February 17, 2023, Ms. Allen responded in writing on behalf of the Custodian disclosing a computer-aided dispatch (“CAD”) report. Ms. Allen further advised that “[n]o other documents” or video existed.

**Denial of Access Complaint:**

On April 19, 2023, the Complainant filed a Denial of Access Complaint with the

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

<sup>2</sup> Represented by Paul Burr, Esq., of the Township of Montclair (Montclair, 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.

Government Records Council (“GRC”). The Complainant asserted that she was unlawfully denied access to “notes describing the incident” or responsive video footage on the basis that none existed. The Complainant argued that following the Township of Montclair’s (“Township”) February 17, 2023 response to her OPRA request, she appeared remotely before the municipal court on April 11, 2023, to challenge the ticket. The Complainant asserted that, during the hearing, both the officer that wrote the ticket and municipal prosecutor confirmed that there was video of the incident, but did not address whether any incident notes existed. The Complainant asserted that the officer stated that his body-worn camera (“BWC”) recorded the interaction, and that the prosecutor received and reviewed the video prior to the court hearing.

The Complainant argued that the forgoing is proof that an unlawful denial of access occurred as to the requested video. The Complainant further argued that she believed the denial was a knowing and willful attempt to mislead her and deny her the opportunity to prepare a defense in the hearing. The Complainant thus requested that the GRC find that either the Custodian, or any other person possessing the footage purposefully denied access with the intent to mislead her, and thus committed a knowing and willful violation of OPRA.

#### Statement of Information:

On June 20, 2023,<sup>4</sup> the Custodian filed a Statement of Information (“SOI”) attaching a legal certification from Sergeant Benjamin J. Campos.<sup>5</sup> The Custodian certified that she received the Complainant’s OPRA request on February 7, 2023. The Custodian certified that the search involved forwarding the OPRA request to MPD. The Custodian averred that MPD could not locate the ticket because the number came from the Municipal Court and the OPRA request did not include a prefix or other valuable information on the incident. The Custodian certified that due to this, Ms. Allen sought and received clarification from the Complainant. The Custodian averred that Ms. Allen used the clarification to perform a search, which yielded the CAD report and no other records. The Custodian certified that Ms. Allen responded in writing on her behalf disclosing a CAD report and stating that “[n]o other documents” or video existed.

The Custodian averred that after receiving the instant complaint, she contacted Sgt. Campos to investigate the circumstances of Ms. Allen’s response. The Custodian certified that Sgt. Campos did locate a video, “which is available immediately,” and determined that the unique circumstances of the incident likely led to Ms. Allen’s belief that the CAD report was the only existent record. The Custodian affirmed that the Complainant was ticketed during a special pedestrian safety traffic detail. The Custodian averred that the Complainant’s infraction was recorded on an officer’s BWC. The Custodian averred that Ms. Allen had no knowledge of the BWC footage’s existence as she had limited information to assist her search. Further, the Custodian averred that it was the Principle Clerk Lynette Rivera who was responsible for addressing discovery requests rather than Ms. Allen.

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<sup>4</sup> The SOI was originally filed on May 31, 2023; however, it was returned because Custodian’s Counsel rather than the Custodian executed same. The Township submitted a new SOI on June 9, 2023; however, that was also returned because it was not signed by the Custodian.

<sup>5</sup> In Sgt. Campos’s legal certification, he confirmed the accuracy of the SOI submission including the attachments thereto.

The Custodian further asserted that the disclosed CAD report did not cure any information deficiencies that resulted in a failure to locate the BWC footage. The Custodian noted that the CAD report identified the incident as a “decoy car,” contained no notes regarding the parties involved or the summons issued and misidentified a dispatcher as the officer involved in the incident. The Custodian averred that Sgt. Campos determined that the lack of officer information made it impossible for Ms. Allen to identify responsive records through MPD’s “LawSoft” program. The Custodian thus argued that it was “not surprising” that Ms. Allen was unable to locate additional records.

The Custodian finally argued that the facts above indicate that no knowing and willful violation occurred. The Custodian asserted that Ms. Allen had limited information to perform a search and disclosed the only record she believed existed. The Custodian further asserted that Sgt. Campos’s investigation into the handling of the OPRA request supports that Ms. Allen’s response was not borne from ill intent.<sup>6</sup> The Custodian noted that the Complainant confirmed that she was informed on April 11, 2023 that the video existed, but failed to contact the Township, make a new request, or obtain same through the normal discovery process. The Custodian also contended that the availability of the BWC footage through the discovery process belies the Complainant’s allegations of purposeful intent. The Custodian finally noted that at the April 11, 2023 hearing, the municipal court dismissed the ticket on the prosecutor’s motion.

#### Additional Submissions:

On July 5, 2024, the Complainant submitted a sur-reply to the SOI.<sup>7</sup> Therein, the Complainant reiterated that she was unlawfully denied access to the requested incident report and BWC footage on the basis that neither existed. The Complainant contended that, in the SOI, the Custodian “eliminat[ed] the first [OPRA request item]” by not addressing it. The Complainant further alleged that the Custodian crafted the SOI in manner to avoid addressing the item.

The Complainant also contended that, because Ms. Allen was unavailable to certify to her personal knowledge of this complaint, the SOI is deficient. The Complainant contended that the Custodian failed to provide any supporting evidence proving her reliance on “Ms. Allen’s e-mail communications, . . . MPD Records’ procedures and practices,” and Sgt. Campos’s subsequent investigation to craft the search portion of the SOI. The Complainant further contended that Sgt. Campos’s legal certification is deficient because it provides no first-hand statements on his step-by-step investigation of Ms. Allen’s actions.

The Complainant also argued that the Custodian provided no explanation as to why she would have referred the OPRA request to the MPD for a response. The Complainant contended

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<sup>6</sup> The Custodian asserted that the records could have arguably been exempt under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1. While this exemption was not asserted and is thus not before the Council, it should be noted that summonses derived from Title 39 traffic violations are not generally considered a “crime” necessary to meet one of the two criminal investigatory exemption prongs. *See e.g. Blue v. Wall Twp. Police Dep’t*, GRC Complaint No. 2002-47 (August 2003). Additionally, the Council has previously held in *Dericks (O.B.O. TAPintoSparta.net) v. Sparta Twp. (Sussex)*, GRC Complaint No. 2016-227 (September 2017), that BWC footage cannot be considered a criminal investigatory record for purposes of OPRA. *See also N.J.S.A. 40A:14-118.5*.

<sup>7</sup> The Complainant sought from the GRC and obtained an extension of the sur-reply time frame set forth in N.J.A.C. 5:105-2.4(n) through July 5, 2024.

that the referral of an OPRA request to the wrong department has a major impact on the ultimate response. The Complainant asserted that if Ms. Allen could not perform a search, the Custodian should have explained why she transferred the OPRA request to the wrong department. The Complainant also noted that the other employee involved in discovery requests was copied on Ms. Allen's February 14, 2023 response; however, the SOI fails to describe the other employee's role in this complaint. The Complainant thus asserted that the Custodian failed to support why she did not direct the request to the other employee whom the SOI contended had the necessary tools to perform a complete search.

The Complainant next discounted that any of the responsive records could be considered criminal investigatory because they related to a traffic violation. The Complainant also argued that she followed the directions on the Township's official OPRA request form closely in that it only asked for a "case number" and general time frame. The Complainant noted that she provided clarification and Ms. Allen did not ask for additional clarification; thus, the Custodian could not argue that the information provided was "sparse" or "limited."

The Complainant contended that the Custodian failed to "clear" herself or Ms. Allen of a knowing and willful violation. The Complainant contended that because Ms. Allen falsely claimed that no BWC footage existed, it is possible that all other representations regarding the handling of this OPRA request are false and need to be confirmed through her own legal certification. The Complainant further contended that none of the SOI certifications contain firsthand knowledge and thus are not "competent proof" of the Township's position. The Complainant also argued that the GRC should not accept the disclosability of a record through some other process. The Complainant finally argued that the Custodian fails to appreciate that this complaint did not involve obfuscation, but rather a knowing and willful denial of access.

### **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.

#### **Incident Report**

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant's OPRA request sought in part incident reports related to Ticket No. 004791. After obtaining clarification, the Township disclosed a CAD report to the Complainant and advised that there were "[n]o other documents." This complaint followed, wherein the Complainant asserted that she received a CAD report that did not contain "incident notes." However, the Complainant did not provide any additional arguments on the issue at that time. In the SOI, the Custodian acknowledged that she disclosed the CAD report,

although it was “arguably not responsive” to the subject OPRA request and that “[n]o other documents” existed. In her sur-reply, the Complainant contended that the Custodian failed to address the incident report in the SOI.

Upon review of all the facts and submissions in this complaint, the GRC is satisfied that no violation occurred because no incident report exists. First, the initial response indicated that no additional records existed. Second, the Complainant chose to focus her complaint on the BWC footage that was later identified as in existence during an April 2023 court appearance. Contrary to the Complainant’s assertion that the Custodian purposely avoided the incident report issue, her focus on the footage likely prompted the Custodian to craft her SOI to address only that issue. Further, the Custodian did certify in the SOI that the CAD report was disclosed and that “[n]o other documents” existed. Finally, the Complainant has not provided any evidence to refute that no incident reports existed. The GRC is thus compelled to find that Pusterhofer applies to facts presented here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the portion of the Complainant’s OPRA request seeking an incident report in relation to Ticket No. 004791. Specifically, Ms. Allen responded, the Custodian certified in the SOI, and, the record reflects, that no incident reports responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### BWC Footage

Here, the Complainant’s OPRA request sought in part “any video taken” of the incident associated with Ticket No. 004791. The Township responded advising that no footage existed. However, BWC footage was subsequently identified during the discovery process for the April 2023 hearing.

This complaint followed, wherein the Complainant contended that the Township purposely withheld the footage to deny her the ability to defend herself properly at the hearing. In the SOI, the Custodian certified at length to the difficulty Ms. Allen had locating responsive records based on the information provided by the Complainant, as well as the CAD report information. The Custodian further certified, in tandem with Sgt. Campos, that Ms. Allen was not responsible for discovery requests and that it was “not surprising” that Ms. Allen was unable to locate additional records. In her sur-reply, the Complainant levied several rebuttal arguments, including that the OPRA request was sent to the wrong department.

The evidence of record supports that an unlawful denial of access occurred here. Specifically, the Custodian, through Ms. Allen, initially stated that there was no footage related to Ticket No. 004791. Subsequently, BWC footage was located and provided as part of the discovery process associated with the April 2023 hearing regarding the ticket. Thus, the evidence supports that video footage did, in fact, exist and should have been disclosed in response to this OPRA request.

As to the dispute over the search conducted, the GRC notes that the Complainant’s assertion that the Custodian sent the request to the “wrong department” appears erroneous. The

Complainant sought records associated with a ticket issued by MPD and identified on the OPRA request form that she was seeking police records. Once received, the Custodian forwarded the OPRA request to Ms. Allen who, according to the SOI, is an employee within the MPD Records and Identification Bureau that addresses OPRA requests seeking police records. Thus, any argument that the OPRA request was sent to the wrong department is belied by the factual record.

Accordingly, although the Custodian, through Ms. Allen, initially denied the request on the basis that no records existed, a subsequent discovery request revealed that BWC footage did exist. Further, there is no evidence in the record to support that same was exempt from disclosure and should not have been disclosed to the Complainant. Thus, the Custodian unlawfully denied access to the portion of the Complainant's OPRA request seeking video footage related to Ticket No. 004791. See N.J.S.A. 47:1A-6. In the absence of evidence indicating that disclosure occurred, the Custodian shall disclose the responsive recording to the Complainant.

### **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly and willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty.” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states “[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA].” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, the Complainant argued that the Township knowingly and willfully denied access to the responsive BWC footage to deny her the ability to prepare for the April 2023 hearing associated with Ticket No. 004791. In the SOI, the Custodian and Sgt. Campos provided significant detail on the search performed and the reasons why the BWC footage was not initially located. The Custodian further argued that the Township's actions proved that no knowing and willful violation occurred. In her sur-reply, the Complainant argued that the SOI was deficient of several submissions and certifications, and that Ms. Allen may have been incapable of performing a search. The Complainant thus contended that the SOI, which contained unverified



facts and lacked competent proof, did not effectively refute that a knowing and willful violation occurred.

Upon review, the GRC is persuaded that no knowing and willful violation occurred. Considering all evidence submitted and the arguments of the parties, it appears that the failure to disclose the responsive BWC footage was neither intentional or deliberate. The Complainant semantically argued that a lack of certifications doomed the SOI; however, the GRC finds sufficient the Custodian and Sgt. Santos's SOI certifications. Further, the search discussion included therein is compelling to support that although an unlawful denial occurred, it was not due to an intentional or deliberate attempt to hide the existence of the BWC footage. Additionally, the Complainant's allegation that the Township willfully meant to obstruct her defense in the April hearing is belied by the Township's admittance of the footage's existence and request to dismiss the ticket, which was granted by the court.

Accordingly, although the Custodian unlawfully denied access to the requested BWC footage, she did not unlawfully deny access to the requested incident reports because none existed. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she lawfully denied access to the portion of the Complainant's OPRA request seeking an incident report in relation to Ticket No. 004791. Specifically, Ms. Allen responded, the Custodian certified in the Statement of Information, and the record reflects, that no incident reports responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. Although the Custodian, through Ms. Allen, initially denied the request on the basis that no records existed, a subsequent discovery request revealed that body-worn camera footage did exist. Further, there is no evidence in the record to support that same was exempt from disclosure and should not have been disclosed to the Complainant. Thus, the Custodian unlawfully denied access to the portion of the Complainant's OPRA request seeking video footage related to Ticket No. 004791. See N.J.S.A. 47:1A-6. In the absence of evidence indicating that disclosure occurred, the Custodian shall disclose the responsive recording to the Complainant.
3. **The Custodian shall comply with conclusion No. 2 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).**

4. Although the Custodian unlawfully denied access to the requested body-worn camera footage, she did not unlawfully deny access to the requested incident reports because none existed. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Executive Director

March 18, 2025