



State of New Jersey

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Commissioner

FINAL DECISION

June 30, 2026 Government Records Council Meeting

Shaun Clifton-Short
Complainant

Complaint No. 2024-98

v.

Essex County Prosecutor's Office
Custodian of Record

At the June 30, 2026, public meeting, the Government Records Council ("Council") considered the June 23, 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 the requested surveillance footage, to the extent it exists, is not subject to access under OPRA because they are exempt under N.J.S.A. 47:1A-1.1. N. Jersey Media, Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017). Thus, the Custodian lawfully denied access to the subject OPRA request. 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 30th Day of June 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: July 1, 2026



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2026 Council Meeting**

**Shaun Clifton-Short¹
Complainant**

GRC Complaint No. 2024-98

v.

**Essex County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Copies of the following relating to State v. Short, Indictment No. 08-03-0985-1:

1. "Any and all discovery documentation, including" video surveillance footage taken from a Shop Rite on February 1, 2007.
2. "Any and all discovery documentation, including" video surveillance footage taken from a specific address in East Orange, NJ on February 1, 2007.

Custodian of Record: Stephen Pogany, Esq.
Request Received by Custodian: February 29, 2024
Response Made by Custodian: March 8, 2024
GRC Complaint Received: April 16, 2024

Background³

Request and Response:

On February 16, 2024, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On March 8, 2024, the Custodian responded in writing denying the requested footage under the criminal investigatory records exemption, citing N.J.S.A. 47:1A-1.1; Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 591 (2011); N. Jersey Media, Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); and Janeczko v. N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint No. 2002-79, *et seq.* (June 2004), among other decisions.

The Custodian further stated that the responsive records are exempt under the "inter-agency or intra-agency advisory, consultative, or deliberative material" exemption. N.J.S.A. 47:1A-1.1.

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

The Custodian also stated that the request was denied because the requested records constitute unfiled discovery materials exempt from disclosure under N.J.S.A. 47:1A-9(b) and Drinker, Biddle & Reath, LLP. V. N.J. Dep't of Law & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 497-98 (App. Div. 2011). The Custodian further noted that MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546-549 (App. Div. 2005), supports its denial on the basis that OPRA was not meant to be a tool, supplement, or replacement for discovery. The Custodian also noted that discovery obligations end once a defendant is convicted and do not extend to post-conviction proceedings, as noted in State v. Szemle, 247 N.J. 82, 96-97 (2021) (citing State v. Marshall, 148 N.J. 89, 268 (1997)). The Custodian further denied the OPRA request under N.J.S.A. 47:1A-9(a) and Executive Order No. 69 (Gov. Whitman, 1997), which exempts access to crime scene photographs pursuant to McCrone (The Trenton Times) v. Burlington Cnty. Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005) and Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009).

Denial of Access Complaint:

On April 16, 2024, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed the Custodian's denial of access to the requested surveillance footage noting that the incident report associated with his indictment indicated two (2) detectives reviewed the footage and described it in detail. The Complainant contended that he has attempted to obtain this footage beginning in 2008 but was repeatedly told that no such records existed. The Complainant asserted that, after all that time, the Essex County Prosecutor's Office ("ECPO") is no longer asserting that no records exist, and instead is claiming the records are exempt.

The Complainant argued that none of the claimed exemptions are applicable to himself or the requested records. The Complainant disputed the ECPO's claim that its discovery obligation expired upon conviction and did not extend to post-conviction proceedings, asserting that position is contrary to multiple New Jersey's Supreme Court decisions, including State v. Hannah, 248 N.J. 148 (2021). The Complainant further asserted that, pursuant to Rule 3:13-3, a prosecutor's discovery must include multiple types of recordings and reports. The Complainant contended that the ECPO's continued failure to disclose the requested footage represented a violation of his constitutional right to a fair trial, a right guaranteed by the constitution and affirmed by significant precedential case law and court rules.

Statement of Information:

On June 4, 2024, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on February 29, 2024. The Custodian affirmed that he did not perform a search for responsive records because they clearly fell under the criminal investigatory exemption. The Custodian certified that he responded in writing on March 8, 2024, denying the OPRA request on several bases.

The Custodian maintained that he lawfully denied access to the Complainant's OPRA request for the reasons set forth in his March 8, 2024 response.

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 defines a criminal investigatory record as “a record which is not required by law to be made, maintained, or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1. A record is deemed exempt as a criminal investigatory record when it meets both prongs of the statutory definition of investigatory reports: (1) the record must “not [be] required by law to be made, maintained, or kept on file that is held by a law enforcement agency”; and (2) the record must “pertain[] to any criminal investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1. Only when both those prongs are met is a record is deemed exempt as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1. O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 380-81 (App. Div. 2009); see also N. Jersey Media Grp., Inc., 229 N.J. at 564 (affirming criminal investigatory record exception). Therefore, for a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test. See O’Shea, 410 N.J. Super. 371.

In N. Jersey Media Grp., Inc., the Supreme Court made clear that if the first prong cannot be met because such a record “is required by law to be made,” then that record “cannot be exempt from disclosure under OPRA’s criminal investigatory records exemption.” 229 N.J. at 565 (quoting N.J.S.A. 47:1A-1.1). Although the Court agreed with the Appellate Division’s analysis in O’Shea that a clear statement of policy to police officers from the State Attorney General has “the force of law for police entities,” it refused to conclude that records retention schedules adopted by the State Records Committee meet OPRA’s “required by law” standard. Id.

The Court also noted that, even if a record is not required by law to be made, it must still be found to “pertain[] to a criminal investigation.” Id. at 569 (quoting N.J.S.A. 47:1A-1.1) (alterations in original). The Court reiterated the Appellate Division’s observation that “some police records relate to an officer’s community-caretaking function; others to the investigation of a crime.” Id. (citing N. Jersey Media Grp., Inc., 441 N.J. Super. at 105).⁴ The Court reasoned that determination of whether such records pertain to a criminal investigation requires a “case-by-case analysis.” Id. However, the Court pointed out that police records that stem from “an investigation into actual or potential violations of criminal law,” such as “detailed investigative reports and witness statements,” will satisfy the second prong of OPRA’s criminal investigatory records exemption. Id. (emphasis added).

⁴This is instructive for police agencies because it underscores the fact that their role in society is multi-faceted; hence, not all their duties are focused upon investigation of criminal activity. And only those records created in their capacity as criminal investigators are subject to OPRA’s criminal investigatory records exemption.

Moreover, the Council has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. In Janeczko, GRC 2002-79, *et seq.*, the Council held that “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.”⁵ Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete.”

In the instant complaint, the Complainant sought surveillance camera footage related to a February 1, 2007 incident that resulted in Indictment No. 08-03-0985-1. The Custodian responded by denying access to the responsive footage under, among other bases, the criminal investigatory exemption in N.J.S.A. 47:1A-1.1, as supported by relevant case law. The Complainant contended that he had a constitutional right to the responsive records and that the ECPO had an affirmative obligation to provide him records considered discoverable pursuant to New Jersey’s Court Rules and precedential Supreme Court decisions regarding discovery. In the SOI, the Custodian maintained that he lawfully denied access to the requested footage for the reasons proffered to the Complainant in his denial.

Upon review, the GRC is satisfied that the Custodian lawfully denied access to the Complainant’s OPRA request under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1. Regarding the first prong of the test, there is no evidence in the record to support that the footage, regardless of the potential non-existence thereof, was required by law to be made or maintained. Instead, the Complainant presents no argument to the contrary, and instead focuses on his position that he has a constitutional right to discovery..

Regarding the second prong of the test, there is no dispute that the surveillance footage relates to a criminal investigation. The Complainant confirmed this by attaching an incident report detailing detectives’ review of the footage to his Denial of Access Complaint. The Complainant also argued that this footage should have been provided to him as part of discovery in his trial. Thus, the Complainant clearly connects the February 1, 2007 incident to Indictment No. 08-03-0985-1, which ultimately led to his conviction and incarceration.

Further, the Complainant’s arguments regarding his status as a defendant are of no moment here. Specifically, the Complainant’s “defendant” status does not abrogate OPRA or the applicable regulation exempting access to the responsive footage as no such exception exists. Finally, whether the Complainant should be permitted access to the footage in response to a discovery motion in other matters is a separate issue not properly before the GRC. N.J.S.A. 47:1A-7(b); MAG, 375 N.J. Super. 534, 543-546 (App. Div. 2005); Brunson v. State of N.J., Office of the Attorney General, GRC Complaint No. 2013-248 (November 2013) (footnoting that the GRC has no authority to adjudicate discovery complaints).

Accordingly, the requested surveillance footage, to the extent it exists, is not subject to access under OPRA because they are exempt under N.J.S.A. 47:1A-1.1. N. Jersey Media Grp., Inc., 229 N.J. 541. Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

⁵ The GRC’s ruling was affirmed in an unpublished opinion of the Appellate Division.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the requested surveillance footage, to the extent it exists, is not subject to access under OPRA because they are exempt under N.J.S.A. 47:1A-1.1. N. Jersey Media, Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

June 23, 2026