



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

February 24, 2015 Government Records Council Meeting

Karen Jean Butala
Complainant

Complaint No. 2014-194

v.

Township of Aberdeen (Monmouth)
Custodian of Record

At the February 24, 2015 public meeting, the Government Records Council (“Council”) considered the February 17, 2015 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 Custodian lawfully denied access to the responsive domestic violence records at the time of the Complainant’s OPRA request because same are exempt under the Prevention of Domestic Violence Act of 1991, and no exceptions in the statute provide for exceptions to access for victims. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014).

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 24th Day of February, 2015

Robin Berg Tabakin, Esq., 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: February 26, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 24, 2015 Council Meeting**

**Karen Jean Butala¹
Complainant**

GRC Complaint No. 2014-194

v.

**Township of Aberdeen (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. All police reports resulting from an emergency call placed on April 27, 2014, by the Complainant.
2. Any statements and documents relating to the emergency call and the transcripts for same.
3. Complaint filed by the Complainant on March 1, 2014.
4. Complaint filed by the Complainant on March 3, 2014.

Custodian of Record: Chief John T. Powers
Request Received by Custodian: May 6, 2014
Response Made by Custodian: May 13, 2014
GRC Complaint Received: May 14, 2014

Background³

Request and Response:

On May 6, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 13, 2014, the Custodian responded in writing denying access to the requested records under N.J.S.A. 2C:25-33 of the Prevention of Domestic Violence Act of 1991 (“DVA”).

Denial of Access Complaint:

On May 14, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that she was the victim of an

¹ No legal representation listed on record.

² Represented by Daniel J. McCarthy, Esq., of Rogut, McCarthy, LLC (Cranford, NJ).

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.

assault on April 27, 2014. The Complainant stated that after attempting to obtain records related to the assault, she filed an OPRA request. The Complainant stated that the Custodian denied her access to the responsive records under the DVA on May 13, 2014.

Additional Submissions:

On May 21, 2014, the Complainant e-mailed the GRC advising that she attempted to obtain the responsive records based on approval by the municipal prosecutor and was again denied access to same. The Complainant stated that Captain Joseph Cole advised her that he would not disclose any records pending the completed adjudication of this complaint. The Complainant noted that she advised Captain Cole that she would be amicable to withdrawing the complaint if she received the responsive records; however, Captain Cole would not acquiesce. The Complainant expressed confusion as to why she was not able to obtain reports of an incident for which she was the victim.

Statement of Information:

On May 23, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 6, 2014. The Custodian certified that upon receipt of the request, he identified the following records as responsive to the Complainant’s OPRA request:

1. 911 tape transcript dated April 27, 2014.
2. Police report regarding the Complainant.
3. Complaint filed by the Complainant on May 1, 2014.
4. Complaint filed by the Complainant on May 3, 2014.

Also, the Custodian certified that the responsive records were preserved in the instance that disclosure of same is ordered.

The Custodian alleged that his denial of access to the requested records was appropriate under N.J.S.A. 47:1A-1.1 and the DVA. The Custodian contended that the records at issue here spawned from a domestic violence incident called in by the Complainant.

Additional Submissions:

On January 16, 2015, based on the Complainant’s May 21, 2014 e-mail, the GRC e-mailed the parties for an update. On the same day, the Complainant responded advising that she attempted to obtain the records again on June 4, 2014, at the conclusion of her case and was denied. The Complainant stated that she was no longer interested in withdrawing her complaint.

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:

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*; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

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

Further, the DVA provides that “[a]ll records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.” N.J.S.A. 2C:25-33.

Previously, in VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014), the Council was tasked with determining whether the custodian lawfully denied access to certain records under the DVA. In concluding that the custodian lawfully denied access to same, the Council confirmed that the records definitively related to a domestic violence incident and noted that the DVA included a confidentiality clause. Id. at 5.

In the matter currently before the Council, the Complainant filed this complaint, arguing that the Custodian should have provided her access to the responsive records as the victim of the incident in question. In her initial OPRA request, the Complainant confirmed that the incident was domestic violence-related. In the SOI, the Custodian alleged that the records responsive to the request related to a domestic violence incident and that his denial of access was lawful under the DVA.

Although VanBree was decided during the pendency of this complaint, the Council’s decision is instructive. First, the GRC is satisfied that the records at issue here relate to a domestic violence incident. The DVA offers a multitude of protections to victims, including confidentiality of records maintained pursuant to the same. However, none of the provisions of the DVA provide for exceptions expressly requiring disclosure of such records to a victim. For this reason, and in accordance with the Council’s prior decision in VanBree, the records fall within the purview of the DVA and are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33.

Therefore, the Custodian lawfully denied access to the responsive domestic violence records at the time of the Complainant’s OPRA request because same are exempt under the DVA, and no exceptions in the statute provide for exceptions to access for victims. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree, GRC 2014-122.

The GRC notes that, also during the pendency of this complaint, the Legislature amended OPRA, effective November 1, 2014, to provide that any victim of a crime who submitted an OPRA request for his or her own records regarding that crime shall be provided with same free of charge. N.J.S.A. 47:1A-5(b). Further, the amendment exempted access to “any written request by a crime victim for a record to which the victim is entitled to access as provided in this section, including, but not limited to . . . domestic violence offense report[s] . . .” N.J.S.A. 47:1A-1.1. This amendment implies that, going forward, victims may be able to obtain access to domestic violence records under OPRA free of charge; however, the GRC has not applied the new amendment to such a fact-specific case at this time. Further, the GRC cannot retroactively apply this amendment to complaints that were pending at the time that OPRA was amended. *See Wolosky v. Twp. of Randolph (Morris)*, GRC Complaint No. 2010-186 (Interim Order dated December 20, 2011).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the responsive domestic violence records at the time of the Complainant’s OPRA request because same are exempt under the Prevention of Domestic Violence Act of 1991, and no exceptions in the statute provide for exceptions to access for victims. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014).

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

Approved By: Dawn R. SanFilippo
Deputy Executive Director

February 17, 2015