



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**November 13, 2018 Government Records Council Meeting**

Joseph Lamar Anglin  
Complainant

Complaint No. 2017-45

v.

NJ Office of Homeland Security and  
Preparedness  
Custodian of Record

At the November 13, 2018 public meeting, the Government Records Council (“Council”) considered the November 7, 2018 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 investigation materials of the Domestic Preparedness Task Force responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the records sought were part of an investigation conducted by Det. Nase as part of her duties within the Task Force. Further, the Domestic Security Preparedness Act is clear that records in the possession of the Task Force are exempt from disclosure. N.J.S.A. 47:1A-9(a); N.J.S.A. App.A:9-74(a). Finally, because any potential responsive records are exempt from disclosure under the Act, the GRC declines to address whether the other asserted exemptions apply.

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 13<sup>th</sup> Day of November, 2018

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: November 15, 2018**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
November 13, 2018 Council Meeting**

**Joseph Lamar Anglin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-45**

v.

**New Jersey Office of Homeland Security  
and Preparedness<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies via U.S. mail of “all information and reports” related to the investigation of items found at an estate and “information” about what other agencies might have “information or reports” on the investigation.

**Custodian of Record:** Steven Gutkin  
**Request Received by Custodian:** February 15, 2017  
**Response Made by Custodian:** February 21, 2017  
**GRC Complaint Received:** March 1, 2017

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

**Request and Response:**

On February 15, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 21, 2017, the Custodian responded in writing denying the request under the Domestic Security Preparedness Act (“Act”), Executive Order No. 21 (Gov. McGreevey 2002) (“EO 21”), and Executive Order No. 5 (Gov. Corzine 2006) (“EO 5”).

**Denial of Access Complaint:**

On March 1, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he sought the requested records to prove his case in United States District Court. The Complainant noted that he contacted Livingston Police Department regarding missing “large kegs of explosive [black powder] . . . hundreds of guns[,] and millions of dollars” in assets as part of an estate issue. The Complainant

---

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

<sup>2</sup> Represented by Deputy Attorney General Adam Robert Gibbons.

<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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Joseph Lamar Anglin v. New Jersey Office of Homeland Security and Preparedness, 2017-45 – Findings and Recommendations of the Council Staff

stated that the Police Department referred the matter to the New Jersey Office of Homeland Security and Preparedness (“HSP”) for investigation.

The Complainant contended that the work-product of Detective Colleen Nase contained direct evidence of multiple illegal actions and a breach of his civil rights. The Complainant contended that Det. Nase verbally advised him that HSP’s investigation resulted in a family issue and not a domestic security issue. The Complainant further asserted that HSP concluded that the explosive materials were not utilized in a 2016 New York/New Jersey “BOMB”<sup>4</sup> incident and that the guns were accounted for.

Statement of Information:

On April 5, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on February 15, 2017. The Custodian certified that he reviewed potentially responsive records and concluded that they were exempt from disclosure. The Custodian certified that he responded in writing on February 21, 2017 denying the request.

The Custodian argued that the requested records were clearly exempt from disclosure under OPRA. N.J.S.A. 47:1A-9. The Custodian stated that EO 5 provided that “[a]ll documents, materials, and information pertaining to counter-terrorism investigation, intelligence, training, and protocols created, compiled, obtained or maintained by [HSP] shall be deemed confidential, non-public and not subject to [OPRA].” See also EO 21 (containing an exemption for records that would substantially interfere with the State’s ability to defend against sabotage or terrorism). The Custodian stated that the Act provided that no records maintained by the Domestic Security Task Force, which is part of HSP, were subject to disclosure under OPRA. N.J.S.A. App.A:9-74(a). Finally, the Custodian stated that the New Jersey Department of Law & Public Safety’s regulations exempted records that may reveal:

the identity of a confidential informant, a confidential source, a citizen informant, or undercover personnel; or an agency's surveillance, security, tactical, investigative, or operational techniques, measures, or procedures, which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software, or compromise an agency's ability to effectively conduct investigations.

[N.J.A.C. 13:1E-3.2(a)(2).]

The Custodian averred that the Complainant made no secret that he sought Det. Nase’s investigation material regarding lost kegs of black powder explosives and hundreds of fire arms. The Custodian also stated that the Complainant acknowledged that he initiated the investigation. The Custodian thus contended that it was “axiomatic” that the records were exempt under EO 5. The Custodian further argued that it was clear that records concerning possible terroristic elements and containing investigative techniques, procedures, and policies were exempt under EO 21 and N.J.A.C. 13:1E-3.2(a)(2). The Custodian additionally argued that the records were also exempt

---

<sup>4</sup> The Complainant provides no further detail in referencing the “BOMB” incident. Thus, the GRC cannot confirm the incident to which the Complainant alluded.

under the security and surveillance exemption at N.J.S.A. 47:1A-1.1. The Custodian further certified that Det. Nase fell within the umbrella of the Domestic Preparedness Task Force (“Task Force”). The Custodian argued that N.J.S.A. App.A:9-74(a) clearly exempted any records she maintained regarding her investigation from disclosure under OPRA.

Lastly, the Custodian asserted that the portion of the request seeking “information about what other agencies” might have on the investigation was invalid. Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian contended that this portion failed to identify a specific record and would have required research.

#### Additional Submissions:

On April 6, 2017, the Complainant e-mailed the Custodian’s Counsel stating that the SOI made him “see the error of [his] request” and that he needed to be more specific. The Complainant thus stated that he sought an answer to the following question: “[w]hat items did [an individual involved in the estate] say were removed from” the estate after December 25, 2013. The Complainant noted that he was not interested in any investigative “procedures.”

### 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 its provisions:

[S]hall 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 Act provides that “[n]o record held, maintained or kept on file by the [Task Force] or the planning group shall be deemed to be a public record under [OPRA] . . .” N.J.S.A. App.A:9-74(a).

In the matter currently before the Council, the Complainant sought “all information and reports” related to an investigation of an estate that initiated after his contact with authorities regarding missing kegs of black powder and an unknown number of firearms. The Custodian responded denying access under several different authorities, including the Act. As part of the SOI,

the Custodian certified that Det. Nase was part of the Task Force. The Custodian argued that N.J.S.A. App.A:9-74(a) provided that records maintained by the Task Force were explicitly exempt from disclosure under OPRA.<sup>5</sup>

A plain reading of N.J.S.A. App.A:9-74(a) supports the Custodian's denial of access here. This conclusion is also supported by multiple facts within the evidence of record. First, the Complainant believed that munitions and black powder kegs were missing from an estate to which he was a potential beneficiary. Thus, he reported the alleged missing items to the Livingston Police Department, who in turn referred the matter to HSP. The parties also agree that Det. Nase performed an investigation into the missing items, which certainly implicate issues of domestic security. Further, whether DHS ultimately concluded that the issue was a "family matter," as asserted by the Complainant, is of no moment. The statutory provision protecting Task Force documents is clear: any records maintained are not subject to access under OPRA. Further, the provision does not provide exceptions for records relating to investigations found to be unsubstantiated.

Accordingly, the Custodian lawfully denied access to investigation materials of the Task Force responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the records sought were part of an investigation conducted by Det. Nase as part of her duties within the Task Force. Further, the Act is clear that records in the possession of the Task Force are exempt from disclosure. N.J.S.A. 47:1A-9(a); N.J.S.A. App.A:9-74(a). Finally, because any potential responsive records are exempt from disclosure under the Act, the GRC declines to address whether the other asserted exemptions apply.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that the Custodian lawfully denied access to investigation materials of the Domestic Preparedness Task Force responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the records sought were part of an investigation conducted by Det. Nase as part of her duties within the Task Force. Further, the Domestic Security Preparedness Act is clear that records in the possession of the Task Force are exempt from disclosure. N.J.S.A. 47:1A-9(a); N.J.S.A. App.A:9-74(a). Finally, because any potential responsive records are exempt from disclosure under the Act, the GRC declines to address whether the other asserted exemptions apply.

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

November 7, 2018

---

<sup>5</sup> The GRC does not formally reach a conclusion on the Custodian's SOI argument that a portion of the Complainant's request was invalid because it sought information. However, the GRC notes that, as composed, the subject OPRA request does appear to share many of the hallmarks of an invalid request as MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005) contemplate. Joseph Lamar Anglin v. New Jersey Office of Homeland Security and Preparedness, 2017-45 – Findings and Recommendations of the Council Staff