



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**

**September 28, 2021 Government Records Council Meeting**

Alexis T. Miller  
Complainant

Complaint No. 2020-144

v.

Essex County Sheriff's Office  
Custodian of Record

At the September 28, 2021 public meeting, the Government Records Council ("Council") considered the September 21, 2021 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 Complainant's May 1, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant seeks internal affairs records, which are explicitly deemed confidential pursuant to the Internal Affairs Policy & Procedures and not subject to access under OPRA. See O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009), and Wares v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-330 (June 2015).

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 28<sup>th</sup> Day of September 2021

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: September 30, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 28, 2021 Council Meeting**

**Alexis T. Miller<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-144**

**v.**

**Essex County Sherriff's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via pickup of “the complete investigative records and reports for the sexual harassment complaint filed against Essex County Sheriff’s Officer J. Rivera in July of 2013.”

**Custodian of Record:** Olivia Schumann, Esq.  
**Request Received by Custodian:** May 1, 2020  
**Response Made by Custodian:** May 1, 2020  
**GRC Complaint Received:** July 29, 2020

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

**Request and Response:**

On May 1, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing extending the response time frame through May 22, 2020 due on “effort(s) to contain the spread of the novel coronavirus.” On May 21, 2020, the Custodian responded in writing extending the response time frame through June 11, 2020 to communicate with the Essex County Sheriff’s Office (“ECSO”) and due to the ongoing public health emergency. On May 26, 2020, the Complainant e-mailed the Custodian expressing disappointment at the additional extension and asked whether further extensions would occur. On the same day, the Custodian responded stating that no “civilian personnel” were present at the ECSO to conduct a search due to the pandemic. The Custodian further noted that N.J.S.A. 47:1A-5(i) allowed public agencies to extend the response time frame due to the on-going public health emergency and that additional extensions may be likely given the forgoing.

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

<sup>2</sup> No legal representation listed on record.

<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.

On June 11, 2020, the Custodian responded in writing extending the response time frame through July 2, 2020 due to the on-going public health emergency. On July 2, 2020, the Custodian responded in writing extending the response time frame through July 23, 2020 due to the on-going public health emergency. Late on the night of July 2, 2020, the Complainant e-mailed the Custodian stating that he had yet to receive a response and the extended time frame expired earlier in the day. On July 6, 2020, the Custodian responded stating that the deadline was extended through July 23, 2020. The Custodian noted that Sheriff's Office clerical staff began returning to the office and that she has asked them to give priority status to the subject OPRA request.

On July 22, 2020, the Custodian responded in writing denying access to the records responsive to the subject OPRA request under the "investigation in progress" exemption. N.J.S.A. 47:1A-3(a). The Custodian noted that the records in question relate to an investigation being conducted by ECSO's Internal Affairs ("IA") unit and that disclosure would hinder the completion of a fair and accurate investigation and taint witnesses who have not yet been interviewed. On July 23, 2020, the Complainant responded disputing the response by arguing that it "seem[ed] unlikely that an investigation would still be going on [seven] (7) years later."

On July 28, 2020, the Custodian responded in writing clarifying her response. The Custodian noted that the name identified in the OPRA request, as well as the term "sexual harassment complaint," yielded multiple employees and complaints that confused the ECSO. The Custodian noted that this response serves to advise that the actual investigation at the center of the Complainant's OPRA request was closed and not classified as a "sexual harassment complaint." The Custodian thus clarified that the "investigation in progress" exemption does not apply here. The Custodian stated that the responsive records were nonetheless exempt under the Internal Affairs Policy & Procedures ("IAPP") and Attorney General Directive No. 2020-05 (June 2020). The Custodian noted that the records were not requested by any of the excepted parties identified therein and the officer did not receive major discipline.

#### Denial of Access Complaint:

On July 29, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted the ECSO appeared to be covering up an issue by asserting that an investigation has been on-going for seven (7) years.<sup>4</sup> The Complainant argued that ECSO's assertion was contrary to the IA letter she received informing her that the investigation was complete.

The Complainant noted that she received a call from ECSO on July 23, 2020 asking for the first name of the officer to perform a more accurate search. The Complainant expressed concern that the ECSO would be unable to identify their own employees, especially since she was never given the officer's first name.

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<sup>4</sup> The GRC notes that the Complainant caused her complaint to be filed on July 27, 2020. It is thus possible that the Complainant completed her complaint filing prior to receiving the Custodian's clarified response.

Statement of Information:<sup>5</sup>

On December 11, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 1, 2020. The Custodian certified that her search included obtaining assistance from Ms. Hagans at the ECSO. The Custodian certified that following multiple extensions due to the ongoing public health emergency, she responded in writing on July 23, 2020 denying access to the subject OPRA request under N.J.S.A. 47:1A-3(a). The Custodian affirmed that following an additional review, ECSO determined that the actual responsive IA file was exempt under the IAPP and Directive 2020-05. The Custodian certified that she responded to the Complainant on July 28, 2020 correcting her response.

The Custodian argued that she lawfully denied access to the responsive records under the IAPP and Directive 2020-05. The Custodian noted that changes made to the IAPP and Directive in August 2020 do not impact her July 28, 2020 response. The Custodian noted that the Complainant was provided basic information regarding the investigation to include the officer’s full name, badge number, rank, and outcome of the investigation, but is not permitted to access to the underlying records in accordance with the IAPP and Directive 2020-05.

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.

The Appellate Division has held that Attorney General Guidelines have the force of law for police entities. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). In particular, the IAPP is bound upon all law enforcement agencies in New Jersey pursuant to statute. See N.J.S.A. 40A:14-181. Further, the IAPP explicitly provides that “[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information.” IAPP at 9.6.1 (August 2020). Consistent with the IAPP, the Council held in Wares v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-330 (June 2015) that internal affairs records are not subject to access under OPRA (citing N.J.S.A. 47:1A-9). See also Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015), and Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010).

Here, the Complainant sought access to records regarding a complaint she filed against an ECSO employee. After multiple extensions, the Custodian responded initially denying access under the “investigation in progress” exemption. Following further clarification, the Custodian

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<sup>5</sup> On August 27, 2020, this complaint was referred to mediation. On November 25, 2020, this complaint was referred back to the GRC for adjudication.

clarified this response on July 28, 2020 by stating that certain identifiers led to confusion while ESCO was performing a search. The Custodian noted that ESCO located an IA file responsive to the subject OPRA request, but that same was exempt from disclosure under the IAPP and Attorney General Directive 2020-05. This complaint ensued, wherein the Complainant disputed that any investigation was still ongoing. The Complainant did not address the Custodian's clarified response in her complaint likely because she caused the complaint to be filed prior to receiving same. In the SOI, the Custodian maintained her position that the IA file in question was exempt from disclosure under OPRA.

Prevailing Court case law and the GRC's prior decisions support the Custodian's denial. See O'Shea, 410 N.J. Super. at 382; Gannett Satellite Info. Network, LLC v. Twp. of Neptune, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2021); Rivera v. Union Cnty. Prosecutor's Office, 2020 N.J. Super. Unpub. LEXIS 1192 (App. Div. 2020); Camarata, GRC 2014-127. Specifically, both the Court and Council have held that records related to IA investigations were exempt from disclosure under the IAPP. N.J.S.A. 47:1A-9. Thus, it follows that the records sought, which were part of an internal affairs investigation that resulted in minor discipline (per the SOI), are exempt from disclosure. Wares, GRC 2014-330.

Therefore, the Custodian lawfully denied access to the Complainant's May 1, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant seeks internal affairs records, which are explicitly deemed confidential pursuant to the IAPP and not subject to access under OPRA. See O'Shea, 410 N.J. Super. at 382, and Wares, GRC 2014-330.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's May 1, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Complainant seeks internal affairs records, which are explicitly deemed confidential pursuant to the Internal Affairs Policy & Procedures and not subject to access under OPRA. See O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009), and Wares v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-330 (June 2015).

Prepared By: Frank F. Caruso  
Executive Director

September 21, 2021