



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 25, 2023 Government Records Council Meeting

Jared Toppin
Complainant

Complaint No. 2021-322

v.

Carteret Police Department (Middlesex)
Custodian of Record

At the April 25, 2023 public meeting, the Government Records Council (“Council”) considered the April 18, 2023 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 although the responsive investigation report was exempt from disclosure under the criminal investigatory exemption, the Complainant was nonetheless entitled to access a copy of same because he was the victim in alleged incident. N.J.S.A. 47:1A-1.1. Thus, the Custodian unlawfully denied access to the responsive report. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of the report because same was provided to the Complainant on July 12, 2022 and again on January 10, 2023.

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 25th Day of April 2023

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: May 1, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 25, 2023 Council Meeting**

**Jared Toppin¹
Complainant**

GRC Complaint No. 2021-322

v.

**Carteret Police Department (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Hardcopy via U.S. mail or hand delivery of a “[p]olice [r]eport/complaint.”

Custodian of Record: Captain Jeff Van Woeart

Request Received by Custodian: November 19, 2021

Response Made by Custodian: December 1, 2021

GRC Complaint Received: December 9, 2021

Background³

Request and Response:

On November 19, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 1, 2021, Carteret Police Department’s (“CPD”) Records Clerk Jasbir S. Judge responded in writing on behalf of the Custodian denying access to Investigation Report 1-2021-045578 under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On December 9, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted disputed the denial of access and asserted that he needed the report to “file suit of said claim.”

¹ No legal representation listed on record.

² Represented by Robert Bergen, Esq. (Carteret, 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.

Statement of Information:⁴

On March 4, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 19, 2021. The Custodian certified that the responsive report was in CPD’s computer-aided dispatch system. The Custodian certified that Mr. Judge responded in writing on his behalf on December 1, 2021 denying access to the report under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1. The Custodian noted that subsequently offered the report with privacy redactions to the Complainant on January 26, 2022 and February 17, 2022, but did not receive any further contact from the Complainant.

The Custodian averred that on October 25, 2021, the Complainant reported an alleged theft of over \$1,000.00 from his hotel room on October 17, 2021. The Custodian noted that the allegation against an employee of the hotel could be an indictable crime of the third degree according to the contents of the report. The Custodian contended that CPD’s denial of access was lawful because the report meets both prongs of the criminal investigatory test. The Custodian further asserted that after additional discussion with Custodian’s Counsel, it was determined that the Complainant was not the victim of a crime because: 1) he did not initiate a criminal complaint or related civil proceeding; and 2) the allegations levied in the complaint have not been validated through the investigation. The Custodian asserted that the forgoing also guided his decision to offer the record to the Complainant, but with redactions to safeguard both the employee and manager’s personal information.

Additional Submissions:

On March 6, 2023, the GRC sent a letter to the Custodian seeking additional information. The GRC advised that the evidence of record presents an unclear picture of whether the Complainant ultimately received the responsive report. The GRC thus requested that the Custodian respond to the following:

1. Has the responsive report been disclosed with redactions to the Complainant via his preferred method of delivery? If disclosed, please provide the date and supporting documentation showing that same were provided to the Complainant.
2. Was the report previously provided to the Complainant on December 1, or 8, 2021 as indicated in the OPRA request form attached to the SOI? If so, please provide supporting documentation showing same.

The GRC requested that the Custodian provide her response as a legal certification by close of business on March 9, 2023.

On March 8, 2023, the Custodian responded to the GRC’s request for additional information. Therein, the Custodian certified that in response to question No. 1, the Complainant retrieved the responsive report (with redactions), on July 12, 2022. The Custodian certified that the Complainant subsequently sought the report through another OPRA request on December 8, 2022 and again retrieved it on January 10, 2023. The Custodian further certified that in response

⁴ On February 4, 2022, this complaint was referred to mediation. On February 15, 2022, this complaint was referred back to the GRC for adjudication.

to question No. 2, the annotations on the OPRA request refer to the date that Mr. Judge responded to the Complainant in writing and the date he retrieved the response from the CPD.

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. 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 v. Twp. of West Milford, 410 N.J. Super. 371, 380-381 (App. Div. 2006).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017), on appeal from N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015). In the appeal, the Court affirmed that OPRA’s criminal investigatory records exemption applies to police records which originate from a criminal investigation. However, the court stated that “to qualify for the exception — and be exempt from disclosure — a record (1) must not be ‘required by law to be made,’ and (2) must ‘pertain[] to a criminal investigation.’ N.J.S.A. 47:1A-1.1.” Id. at 564.

The Court made it 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. N.J.S.A. 47:1A-1.1.” Id. at 365. Although the Court agreed with the Appellate Division’s analysis in O’Shea, 410 N.J. Super. at 382, 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.

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. 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. at 569 (citing N. Jersey Media Grp., Inc., 441 N.J. Super. at 105).⁵ Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a “case-by-case analysis.” However, the Court pointed out that police records that stem from “an investigation into *actual or potential* violations of criminal law,” such

⁵This is instructive for police agencies because it underscores the fact that their role in society is multi-faceted; hence, not all of 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.

as “detailed investigative reports and witness statements,” will satisfy the second prong of OPRA’s criminal investigatory records exemption. Id. (emphasis added).

The Council has also long held that once a record is determined to be a criminal investigatory record, it is exempt from access. See Janeczko v. N.J. Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), holding 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.⁶ 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.” Moreover, the Council has previously found that investigative reports were exempt as criminal investigatory records. See Crook v. Atlantic Cnty. Prosecutor’s Office, GRC Complaint No. 2010-92 (March 2011)

However, OPRA also provides that a “victim of a crime shall have access to the victim’s own records[.]” N.J.S.A. 47:1A-1.1. OPRA further provides that “no fee shall be charged to a victim of a crime for a copy or copies of a record to which the crime victim is entitled to access, as provided in [N.J.S.A. 47:1A-1.1].” N.J.S.A. 47:1A-5(b).

Here, the Complainant sought access to a police report: he was denied access to the report for Investigation Report 1-2021-045578 under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1. This complaint followed, wherein the Complainant asserted that he needed the record to file a lawsuit. In the SOI, the Custodian argued that the report stemmed from the Complainant’s report of a theft at his hotel room. The Custodian argued that because the accusation could have resulted in a third-degree crime, the report was treated as criminal investigatory and thus exempt under OPRA. The Custodian further noted that it was determined that the Complainant was not a victim because he did not initiate a criminal or civil suit and the investigation resulted in no findings. The Custodian also averred that he offered the report to the Complainant with redactions, but with no response. Through a request for additional information, the Custodian certified that the Complainant twice retrieved a copy of the responsive report on July 12, 2022 and January 10, 2023. The Custodian attached a copy of the report to his response.

Initially, the GRC has reviewed the responsive report and finds weight in the argument that same could be exempt under the criminal investigatory exemption. Specifically, there is no evidence in the record proving that the responsive report was “required by law” to be made, maintained, or kept on file, and the report obviously relates to a criminal investigation. Thus, the record meets the two-prong standard necessary to be considered criminal investigatory under OPRA regardless of the investigation’s outcome. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp. Inc., 229 N.J. 541; Janeczko, GRC 2002-79. Further, the Council has already previously held that investigative reports were exempt under the forgoing exemption.

However, the analysis does not end here: OPRA provides that a victim of a crime can access records regarding their victimization, including “any law enforcement agency report[.]” N.J.S.A. 47:1A-1.1. Here, the Custodian has argued that the Complainant was not considered a victim because he failed to file a criminal or civil suit and the investigation did not result in criminal

⁶ The GRC’s ruling was affirmed in an unpublished opinion of the Appellate Division.

findings. This assertion is in direct contradiction with the actual report, which contains the Complainant's name and contact information in the "Victim" field. Additionally, the GRC notes that the definition of a "victim" in both OPRA and in the "Crime Victim's Bill of Rights" do not contain a threshold by which a person can be defined as a victim beyond their injury or loss as a result of a crime. N.J.S.A. 47:1A-1.1; N.J.S.A. 52:4B-37. The GRC notes that the Complainant sought this very report to "file suit of said claim" and the Custodian affirmed in the SOI that the incident was investigated as a crime. Thus, the evidence supports the fact that the Complainant was the victim in the incident under investigation and should have been given access to the report regardless of its designation as a criminal investigatory record. Notwithstanding, the evidence of record also shows that the Complainant twice received the report after the filing of this complaint.⁷

Accordingly, although the responsive investigation report was exempt from disclosure under the criminal investigatory exemption, the Complainant was nonetheless entitled to access a copy of same because he was the victim in alleged incident. N.J.S.A. 47:1A-1.1. Thus, the Custodian unlawfully denied access to the responsive report. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of the report because same was provided to the Complainant on July 12, 2022 and again on January 10, 2023.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that although the responsive investigation report was exempt from disclosure under the criminal investigatory exemption, the Complainant was nonetheless entitled to access a copy of same because he was the victim in alleged incident. N.J.S.A. 47:1A-1.1. Thus, the Custodian unlawfully denied access to the responsive report. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of the report because same was provided to the Complainant on July 12, 2022 and again on January 10, 2023.

Prepared By: Frank F. Caruso
Executive Director

April 15, 2023

⁷ The Council does not address the lawfulness of redactions made to the investigation report because it was not raised by the Complainant following either disclosure.