



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

JACQUELYN A. SUÁREZ  
*Acting Commissioner*

### FINAL DECISION

#### January 30, 2024 Government Records Council Meeting

Dominick Aboosamara  
Complainant

v.

Borough of Flemington (Hunterdon)  
Custodian of Record

Complaint No. 2022-356

At the January 30, 2024 public meeting, the Government Records Council (“Council”) considered the January 23, 2024 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 Borough foyer security camera footage is exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-177 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of Borough Hall and would create a risk to the safety of the persons therein. Thus, the Custodian lawfully denied access to the requested footage. 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 30<sup>th</sup> Day of January 2024

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 5, 2024**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 30, 2024 Council Meeting**

**Dominick Aboosamara<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-356**

v.

**Borough of Flemington (Hunterdon)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copy of video camera footage from the Borough of Flemington (“Borough”) foyer from 7:00 p.m. to 10:00 p.m. on June 14, 2022.

**Custodian of Record:** Sallie Graziano<sup>3</sup>  
**Request Received by Custodian:** July 8, 2022  
**Response Made by Custodian:** July 18, 2022  
**GRC Complaint Received:** July 21, 2022

**Background<sup>4</sup>**

**Request and Response:<sup>5</sup>**

On July 8, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 18, 2022, the Custodian responded in writing denying the requested footage pursuant to Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016). The Custodian noted that OPRA exempts access to security camera footage where they reveal the capabilities and vulnerabilities of the system.

**Denial of Access Complaint:**

On July 21, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that at a June 14, 2022 Borough Planning Board meeting, a member recused from a particular application was seen conversing with

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

<sup>2</sup> Represented by Tara A. St. Angelo, Esq., of Gebhardt & Kiefer, P.C. (Annadale, NJ).

<sup>3</sup> Ms. Graziano retired on July 29, 2022. The current “Custodian of Record” is Michael Humphrey.

<sup>4</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.

<sup>5</sup> The Complainant also sought the records under the common law right of access, for which the Custodian provided a separate response. However, the GRC notes that it has no authority over the common law right of access. N.J.S.A. 47:1A-7(b); see also Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013). Thus, this issue is not properly before the GRC.

the applicant in the foyer during a meeting break. The Complainant argued that the requested footage is crucial evidence in pursuing potential ethics actions against the member. The Complainant contended that the Custodian's denial was erroneous because the record he sought was not the same as the record at issue in Gilleran, 227 N.J. 159. The Custodian argued that specifically, he sought footage from a 10x10 foyer over three (3) hours and not footage from the Police Station and over an extended time period, as was the case in Gilleran.

#### Statement of Information:

On August 3, 2022, the current Custodian filed a Statement of Information ("SOI"). The current Custodian certified that the Custodian received the Complainant's OPRA request on July 8, 2022. The current Custodian certified that the Custodian responded in writing on July 18, 2022 denying access to the subject record under N.J.S.A. 47:1A-1.1 and Gilleran, 227 N.J. 159.

The current Custodian argued that the Borough's denial of access was lawful as confirmed by the New Jersey Supreme Court in Gilleran. The current Custodian argued that contrary to the Complainant's assertions, access to the footage sought would reveal recording angles and blind spots. The current Custodian thus argued that the Custodian properly applied Gilleran and that the GRC should dismiss this 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 exempts disclosure of records that contain "*emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.*" N.J.S.A. 47:1A-1.1 (emphasis added). OPRA further exempts access to "*security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.*" Id. (emphasis added).

In Gilleran, 227 N.J. 159, the New Jersey Supreme Court held that security footage within a government building is exempt from disclosure under OPRA's security and surveillance exemption at N.J.S.A. 47:1A-1.1. In reaching this conclusion, the Court set forth a detailed explanation of how security footage met the exemption:

Current events since the new millennium make evident the present[-]day difficulties of maintaining daily security for public buildings and people using them. The security exceptions prevent OPRA requests from interfering with such security efforts. Even if the Legislature could not have predicted precisely all the many types of criminal, terroristic events that have happened since OPRA was

enacted, the Legislature created flexible exceptions to preserve public safety and security. Now, we know that knowledge of the vulnerabilities of a security system could allow an ill-motivated person to know when and where to plant an explosive device, mount an attack, or learn the movements of persons, placing a public building or persons at risk. Information that reveals the capabilities and vulnerabilities of surveillance cameras that are part of a public facility's security system is precisely the type of information that the exceptions meant to keep confidential in furtherance of public safety.

...

A sensible application of the security exceptions supports denying release of information that undermines the operation of a government facility's security system. Compelling the wholesale release to the public of videotape product of any security camera, or combination of cameras, from a government facility's security system would reveal information about a system's operation and also its vulnerabilities. Once OPRA is interpreted to require unfettered access to the work product of any camera that is part of a governmental facility's security system, then footage from security cameras in all governmental facilities—police stations, court houses, correctional institutions—would be subject to release on demand. It takes no stretch of the imagination to realize that that would make it possible for any person to gather the information necessary to dismantle the protection provided by such security systems.

Requests for videotape product from surveillance cameras protecting public facilities are better analyzed under the common law right of access where the asserted need for access can be weighed against the needs of governmental confidentiality. (Citations omitted).

[Id. at 174-177.]

In the instant complaint, the Complainant sought access to video footage from the foyer of Borough Hall from 7:00 p.m. to 10:00 p.m. on June 14, 2022, which the Custodian denied under N.J.S.A. 47:1A-1.1 and Gilleran, 227 N.J. 159. In his Denial of Access Complaint, the Complainant argued that he needed the footage for potential future ethics actions. The Complainant also argued that the footage he sought was different from the footage addressed by the Gilleran Court. In the SOI, the current Custodian maintained the Custodian's position that a lawful denial of access occurred because the requested footage would have exposed recording angles and blind spots in the system.

A practical application of Gilleran supports the Custodian's lawful denial of the requested security camera footage. In reaching this conclusion, the GRC agrees with the Court in its concerns about the disclosure of security camera footage. Safety measures in place in New Jersey's government facilities is of paramount importance: those measures necessarily include safeguarding security camera footage from disclosure to anyone under OPRA. Further, and as noted by the Gilleran Court, “[c]ompelling the wholesale release . . . of videotape product of any

security camera . . . would reveal information about a system’s operation and also its vulnerabilities.” Id. at 176. The Custodian’s argument that disclosure would reveal vulnerabilities in that system, especially in a main entry point of Borough Hall, presents compelling evidence sufficient to apply Gilleran here.

Additionally, the Complainant’s attempts to obtain the footage as evidence of an alleged ethics violation is of no moment. The GRC notes that the Complainant did not insinuate ill intent on using the footage for nefarious purposes. Notwithstanding, there are no “need based exceptions” to OPRA’s security exemption. N.J.S.A. 47:1A-1.1. Disclosure of security camera footage here would eviscerate OPRA’s emergency and security exemptions and undermine the Court’s holding in Gilleran. As noted by the Court in Gilleran, the Complainant’s access to the footage in question is better addressed “under the common law right of access.” Id. at 177.<sup>6</sup>

Accordingly, the requested Borough foyer security camera footage is exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. at 174-177. Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of Borough Hall and would create a risk to the safety of the persons therein. Thus, the Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the requested Borough foyer security camera footage is exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-177 (2016). Specifically, disclosure of the footage under OPRA would jeopardize the safety and security of Borough Hall and would create a risk to the safety of the persons therein. Thus, the Custodian lawfully denied access to the requested footage. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

January 23, 2024

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<sup>6</sup> The GRC notes that the Complainant also sought the record under the common law, to which the Custodian denied access on July 19, 2022. However, as previously noted, the GRC has no authority over the common law right of access. N.J.S.A. 47:1A-7(b); Rowan, Jr., GRC 2011-347. Any challenge related to such must be pursued in New Jersey’s courts.