



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 25, 2023 Government Records Council Meeting**

Rufus A. Williams, Jr.  
Complainant  
v.  
County of Burlington  
Custodian of Record

Complaint No. 2022-88

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 the requested security videos are not subject to access under OPRA because they are exempt under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(14). Huysers v. N.J. Dep’t of Corr., GRC Complaint No. 2018-38 (January 2020). Thus, the Custodian lawfully denied access to the subject OPRA request. 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 25<sup>th</sup> 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**

**Rufus A. Williams, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-88**

v.

**County of Burlington<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of “video of the sally port area, holding cell area, and all areas leading to the location where the search was ultimately conducted on February 14, 2018.”

**Custodian of Record:** Dina Rocco, Esq.

**Request Received by Custodian:** February 7, 2022

**Response Made by Custodian:** February 16, 2022

**GRC Complaint Received:** April 4, 2022

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

**Request and Response:**

On February 4, 2022, the Complainant submitted a letter request not referencing the Open Public Records Act (“OPRA”) to the Custodian seeking the above-mentioned records. On February 16, 2022, the Custodian responded in writing<sup>4</sup> extending the response time frame through February 25, 2022 to review potentially responsive records for redaction. On February 25, 2022, the Custodian responded in writing denying access to the Complainant’s OPRA request under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:31-6.10(a)(14).

**Denial of Access Complaint:**

On April 4, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he is a *pro se* defendant in Indictment Nos. 2018-05-0627-I and Indictment No. 2019-02-0230-I. The Complainant stated that he submitted the instant OPRA request to obtain preserved video footage in furtherance of his

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

<sup>2</sup> Represented by Shikha Dutta, Esq., of Malamut & Associates, LLC. (Cherry Hill, NJ).

<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.

<sup>4</sup> The Custodian addressed the request as an OPRA request, notwithstanding that the original letter request did not cite to OPRA. Thus, the Custodian converted the Complainant’s letter request into an OPRA request. See Anonymous v. City of Clifton (Passaic), GRC Complaint No. 2021-66 (March 2022).

defense in those cases. The Complainant argued that he needed the requested videos and that withholding same is a violation of his 14<sup>th</sup> Amendment rights. The Complainant further contended that he was not considered a “member of the public” because he was a *pro se* defendant entitled to exculpatory evidence under multiple federal evidence provisions; the rules governing OPRA do not apply to him.<sup>5</sup>

#### Statement of Information:<sup>6</sup>

On July 12, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request, forwarded from the Burlington County Department of Corrections, on February 7, 2022. The Custodian certified that both her and “outside counsel” received the responsive recordings on February 8, 2022. The Custodian affirmed that the records were reviewed for potential exemptions. The Custodian certified that she initially responded on February 16, 2022 extending the time frame due to the review, and subsequently denied access to the responsive records on February 25, 2022.

The Custodian contended that she lawfully denied access to four (4) responsive videos from Burlington County Detention Center (“BCDC”), all located within the correctional facility’s secured perimeter. The Custodian argued that each video is clearly exempt from disclosure under N.J.A.C. 10A:31-6.10(a)(14), which exempts access to this exact type of record. N.J.S.A. 47:1A-9(a).

### 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 further provides that:

The provisions of this act . . . 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.

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<sup>5</sup> The GRC notes that the Complainant identified additional responsive records (body-worn cameras and mobile video recordings from Willingboro) that are not part of his February 4, 2022 letter. Thus, the GRC will not address these records as they are not at issue here.

<sup>6</sup> On April 26, 2022, this complaint was referred to mediation. On June 27, 2022, this complaint was referred back to the GRC for adjudication.

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

The New Jersey Department of Corrections' regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 *et seq.* . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 *et seq.* . . . (14) Surveillance footage of areas located within a correctional facility's secured perimeter.”

[N.J.A.C. 10A:22-2.3(a)(14).]

The GRC first notes that it has previously considered and found that county-level correctional facilities may rely on DOC's regulations as a valid denial of access. See McClary v. Atlantic Cnty., GRC Complaint No. 2019-14 (July 2020). Further, in Huysers v. N.J. Dep't of Corr., GRC Complaint No. 2018-38 (January 2020), the complainant sought multiple records to include security camera footage held by the Special Investigation Division in relation to an incident at Southern State Correctional Facility. The custodian denied the responsive footage in accordance with OPRA and DOC's regulations. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016); N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14). The Council agreed, holding that the cited exemptions applied, and the custodian lawfully denied access to the requested security footage.

In the instant complaint, the Complainant sought access to several pieces of security video within the BCDC recorded on February 14, 2018. The Custodian responded by denying access to the responsive videos and citing N.J.S.A. 47:1A-9(a) and the relevant DOC regulation. This complaint ensued, wherein the Complainant contended that he had a constitutional right to the responsive records and that his status as a *pro se* defendant effectively invalidated OPRA's exemptions. In the SOI, the Custodian maintained that she lawfully denied access to the requested video for the reasons proffered to the Complainant in her denial. The Custodian further confirmed that each of the four (4) recordings was taken within BCDC's secure perimeter.

The evidence of record presented here supports that the Custodian lawfully denied access to the requested videos under OPRA and DOC's regulations. The exemption clearly applies to security videos within the secure perimeter of a correctional facility. That is, the Custodian has certified, and the description of the records supports that the videos were taken from inside BCDC's secure perimeter.

Further, the Complainant's arguments regarding his status as a defendant have no moment here. Specifically, the Complainant's "defendant" status does not abrogate OPRA or the applicable regulation exempting access to the responsive footage as no such exception exists. Finally, whether the Complainant should be permitted access to the footage in response to a discovery motion in pending matters is a separate issue not properly before the GRC. N.J.S.A. 47:1A-7(b); MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 543-546 (App. Div. 2005); Brunson v. State of N.J., Office of the Attorney General, GRC Complaint No. 2013-248 (November 2013) (footnoting that the GRC has no authority to adjudicate discovery complaints).

Accordingly, the requested security videos are not subject to access under OPRA because they are exempt under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(14). Huysers, GRC 2018-38. Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the requested security videos are not subject to access under OPRA because they are exempt under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(14). Huysers v. N.J. Dep't of Corr., GRC Complaint No. 2018-38 (January 2020). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

April 18, 2023