



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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Governor

TAHESHA L. WAY  
Lieutenant Governor

JACQUELYN A. SUÁREZ  
Commissioner

FINAL DECISION

July 30, 2024 Government Records Council Meeting

Charles Arentowicz  
Complainant

Complaint No. 2022-664

v.

Township of Long Hill (Morris)  
Custodian of Record

At the July 30, 2024 public meeting, the Government Records Council (“Council”) considered the July 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 Study constituted “inter-agency or intra-agency advisory, consultative, and deliberative material” not disclosable under OPRA at the time of the subject OPRA request. N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 285 (2009); Giambri v. Sterling High Sch. Dist. (Camden), GRC Complaint No. 2014-393, *et seq.* (September 2015). Thus, the Custodian did not unlawfully deny access to the responsive record. 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 July 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: August 1, 2024



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Charles Arentowicz<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-664**

v.

**Township of Long Hill (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copy of the final “Police Study” (“Study”) produced by Municipal Resources, Inc. (“MRI”).

**Custodian of Record:** Megan Phillips

**Request Received by Custodian:** November 22, 2022

**Response Made by Custodian:** December 5, 2022

**GRC Complaint Received:** December 9, 2022

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

**Request and Response:**

On November 22, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.<sup>4</sup> On December 5, 2022, the Complainant e-mailed the Custodian reminding her that this was the final business day to respond to the subject OPRA request. The Complainant also asserted that the Township of Long Hill (“Township”) could not argue that the Study was exempt under the “inter-agency or intra-agency advisory, consultative, and deliberative [(“ACD”)] material” exemption. The Complainant noted that Mayor Matthew Dorsi has repeatedly stated that the Study was informational only and a prior MRI study about the Fire Department did not require formal acceptance.

Later on December 5, 2022, the Custodian responded in writing denying access to the Study stating that it is “currently deliberative material . . .” The Custodian noted that the Complainant is aware that the Study would be posted to the Township’s website later. The Complainant responded disputing the denial and asking why the Custodian did not simply deny access in a prior communication. The Complainant also demanded an explanation as to how the

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

<sup>2</sup> Represented by John R. Pidgeon, Esq. of Pidgeon & Pidgeon, P.C. (Princeton, 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 Complainant and Custodian exchanged correspondence discussing the applicable statutory time frame through the seventh (7<sup>th</sup>) business day frame, which was December 5, 2022.

record was “deliberative.” The Complainant noted that Mayor Dorsi received a final version of the Study on November 1, 2022.

### Denial of Access Complaint:

On December 9, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied access to the Study under the ACD exemption. The Complainant contended that the Study did not meet both prongs of the ACD test because Mayor Dorsi made “numerous public statements,” including in response to interview questions for a local publication, that it would not be used to justify changes at the Police Department. The Complainant further asserted that the Study did not contain information for consideration of Township policies on the Police Department. The Complainant conceded that the Study was described as an audit so the Township Committee “can better manage the [P]olice [D]epartment.” The Complainant contended that the Study was being “processed . . . internally for the past thirty-nine (39) days.”

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

On July 19, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 22, 2022. The Custodian certified that she responded in writing on December 5, 2022 denying access to the Study under the ACD exemption. N.J.S.A. 47:1A-1.1. The Custodian noted that following review and approval for release in a December 14, 2022 executive session meeting, the Study was posted to the Township’s website on December 15, 2022 with a minor redaction of the Police Department floor plan for “security reasons.” The Custodian noted that she also provided a copy of the Study to the Complainant on the same day and was also attaching a copy to the SOI.

The Custodian argued that she lawfully denied access to the Study because it was ACD at the time of the subject OPRA request. The Custodian affirmed that the Study was the result of MRI’s review of multiple Township Police Department facets. The Custodian certified that MRI proceeded to make six (6) policy recommendations to the Township on organization and operation for the Police Department. The Custodian thus asserted that the Study was clearly ACD in nature. Shea v. Village of Ridgewood (Bergen), GRC Complaint No. 2010-79 (February 2011).

## 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.

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<sup>5</sup> On January 3, 2023, this complaint was referred to mediation. On June 29, 2023, this complaint was referred back to the GRC for adjudication.

OPRA provides that the definition of a government record “. . . shall not include . . . [ACD] material.” N.J.S.A. 47:1A-1.1. When invoking this exception, a governmental entity may “withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 285 (2009) (citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)). When claiming an OPRA exception to the disclosure requirements on that basis, a custodian must initially satisfy two conditions: (1) the document must be pre-decisional, meaning that the document was generated prior to the adoption of the governmental entity's policy or decision; and (2) the document must reflect the deliberative process, which means that it must contain opinions, recommendations, or advice about agency policies. Id. at 286 (internal citations and quotations omitted). Moreover, a record containing or involving factual components is still entitled to deliberative process protection under OPRA’s ACD exemption when the document was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process. Educ. Law Ctr., 198 N.J. 274, 301-302.

The key factor in this determination is whether the contents of the document reflect “formulation or exercise of . . . policy-oriented judgment or the process by which policy is formulated.” Id. at 295 (adopting the federal standard for determining whether material is “deliberative” and quoting Mapother v. Dep’t of Justice, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). Once the governmental entity satisfies these two threshold requirements, a presumption of confidentiality is established, which the requester may rebut by showing that the need for the material overrides the government's interest in confidentiality. Id. at 286-87.

The Council has previously addressed the disclosability of studies conducted by third parties on behalf of public agencies. In Giambri v. Sterling High Sch. Dist. (Camden), GRC Complaint No. 2014-393, *et seq.* (September 2015), the Council conducted an *in camera* review to determine whether the asserted ACD exemption applied to significant redacts in a report and “Concept Paper” was lawfully denied under the ACD. The Council held that all redactions applied to the records were lawful under the ACD exemption, reasoning that:

The Report meets the two (2) condition standard because: 1) it was clearly created in order to aid the District in making future policy decisions about the future of SJTP; and 2) it contains opinions, recommendations, and factual information integral to the District’s deliberations on SJTP’s future

...

The redacted information [in the “Concept Paper”] contains in this record meets both conditions of the ACD test. Specifically: 1) the record came into existence prior to the District coming to a decision on what to do with the property; and 2) the record contains information relevant to the District’s deliberations on property and opinions on the benefits/realities of selecting each plan.

[Id. at 5. See also Holzli v. City of Clifton (Passaic), GRC Complaint No. 2021-113 (April 2024)]

Here, the Complainant disputed the Custodian's denial of the Study under the ACD exemption. The Complainant contended that Mayor Dorsi had commented that the Study was merely informational and that a prior MRI report about the Fire Department was not treated as ACD in nature. In the SOI, the Custodian maintained the position that the Study was exempt from disclosure at the time of the OPRA request. The Custodian further certified that after an executive session meeting approving release of the Study, it was provided to the Complainant and posted to the Township's website (with minor redactions) on December 15, 2022.

The GRC first notes that in Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the court held that the GRC had a responsibility to perform an *in camera* review where "necessary to a determination of the validity of a claimed exemption. . ." Id. at 355. The court also held that it did not "imply that *in camera* review is required in a case in which the document is *per se* exempt from access under OPRA." Id. Thus, there may be situations where the GRC does not need to perform an *in camera* review where the evidence clearly supports that the cited exemption applied to the withheld record.

Here, the Custodian included the record at issue as part of the SOI. Thus, and unlike Giambri, the GRC need not order an *in camera* review. Specifically, the Custodian included the Study as part of the SOI, which the GRC can review to determine the application of the ACD exemption at the time of the OPRA request. Further, while the GRC recognizes that the Custodian disclosed the Study to the Complainant after the filing of this complaint, the central issue of whether the ACD exemption applied to the Study at the time of the Complainant's OPRA request was not dissolved through disclosure. It should also be noted that the GRC has previously continued its adjudication process where records were disclosed after the filing of a complaint. See e.g. Reilly v. Monmouth Beach Police Dep't (Monmouth), GRC Complaint No. 2015-241 (March 2017); Percella v. City of Bayonne (Hudson), GRC Complaint No. 2017-112, *et seq.* (February 2019).

Turning to that issue, the GRC has reviewed the seventy-four (74) page Study and is persuaded that the ACD exemption did apply to same. Specifically, the "Introduction" section of the Study sets forth the that same was commissioned "for the purposes of assessing risk management and potential organizational enhancements that could be offered for consideration and implementation." Id. The Study contains a full description of several facets of Police Department facilities and operations, MRI's investigative findings, and recommendations on how to correct those findings. When applying both prongs of the ACD test, it is evident that the Study is a pre-decisional document meant to inform the Council on potential future Police Department policy changes. Further, the Study clearly contains MRI's opinions and recommendations of changes the Township can make within the Police Department. Thus, and keeping with Giambri, GRC 2014-393, *et seq.*, the Study was exempt as under the ACD exemption at the time of the Complainant's OPRA request.

Accordingly, the requested Study constituted ACD material not disclosable under OPRA at the time of the subject OPRA request. N.J.S.A. 47:1A-1.1; Educ. Law Ctr., 198 N.J. 274; Giambri, GRC 2014-393, *et seq.* Thus, the Custodian did not unlawfully deny access to the responsive record. N.J.S.A. 47:1A-6.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the requested Study constituted “inter-agency or intra-agency advisory, consultative, and deliberative material” not disclosable under OPRA at the time of the subject OPRA request. N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 285 (2009); Giambri v. Sterling High Sch. Dist. (Camden), GRC Complaint No. 2014-393, *et seq.* (September 2015). Thus, the Custodian did not unlawfully deny access to the responsive record. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

July 23, 2024