



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

James F. Keefer
Complainant

v.

Township of Pennsville (Salem)
Custodian of Record

Complaint No. 2022-669

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:

1. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 1. Specifically, the Custodian certified in the SOI, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to OPRA request item Nos. 2 through 4 due to an existing exemption under the Prevention of Domestic Violence Act. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014). Further, the Complainant’s need for the records in question is of no moment: the Prevention of Domestic Violence Act exemption does not contemplate need-based disclosure for purposes described by the Complainant.

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 30th 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**

**James F. Keefer¹
Complainant**

GRC Complaint No. 2022-669

v.

**Township of Pennsville (Salem)²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S. mail of the following related to a complaint made on November 25, 2022:

1. Audio recordings of the telephone calls made to the Pennsville Police Department (“PPD”).
2. All body-worn camera (“BWC”) and surveillance camera footage from the PPD station regarding the complaint.
3. The “report/investigative records and probable cause” of Patrolman “C. Gibson.”
4. “Probable cause for [N.J.S.A. 2C:28-5.1] charge” including “phone log given to the officer, or the text messages supplied” by the complaining party.

Custodian of Record: Angela N. Foote

Request Received by Custodian: December 2, 2022

Response Made by Custodian: December 6, 2022

GRC Complaint Received: December 14, 2022

Background³

Request and Response:

On December 2, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian informally responded in writing denying the Complainant’s OPRA request under N.J.S.A. 47:1A-9(a) and N.J.S.A. 2C:25-33 of the Prevention of Domestic Violence Act (“PDVA”).

On December 6, 2022, the Complainant responded arguing that his OPRA request was “not for [the complaining party] but for Ptlm. C. Gibson” against whom he intended to file a complaint. The Complainant also asserted his belief that the denial was “the beginning of a cover up.” On the

¹ No legal representation listed on record.

² Represented by Walter J. Ray, Esq. (Pennsville, 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.

same day, the Custodian responded clarifying that the records sought are part of a domestic violence report and are thus exempt under the PDVA. The Complainant responded acknowledging that he understood the Custodian's response, but that it was "not good enough" because he needed proof to file a lawsuit against the Township of Pennsville ("Pennsville") seeking monetary damages.

Later on December 6, 2022, the Custodian formally responded in writing advising that the Complainant's OPRA request item No. 1 was being denied because no responsive records existed. The Custodian noted that the Township did not record incoming or outgoing telephone calls. The Custodian further denied access to OPRA request item Nos. 2 through 4 under N.J.S.A. 47:1A-9(a) and the PDVA.⁴ On December 12, 2022, the Complainant e-mailed the Custodian expressing his belief that the Custodian was intentionally obstructing his attempt to file a lawsuit against the Township. The Complainant argued that a citation (N.J.S.A. 47:1A-6) contained in the response did not apply and demanded that the Custodian provide a proper basis for denial as soon as possible. The Complainant sent a second e-mail disputing the application of N.J.S.A. 2C:25-33, which he found related to Court applications for relief, and asking for clarification. The Custodian responded reaffirming her denial as correct and noting that she would not be providing any additional responses.

Denial of Access Complaint:

On December 14, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that PPD "committed a serious crime" and that the Custodian denied his OPRA request as part of the cover up. The Complainant contended that the Township knew he needed the responsive records to file a lawsuit and instead provided "false, misleading[,] and inaccurate information" to avoid same.

The Complainant further contended that he could not understand why the Custodian cited to N.J.S.A. 47:1A-6 in her response. The Complainant asserted that each of the Custodian's responses became "more convoluted and incorrect then (sic) the last."

Statement of Information:

On January 27, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on December 2, 2022. The Custodian certified that her search included contacting PPD, wherein the Chief advised that the records sought pertained to a domestic violence incident. The Custodian affirmed that she responded the same day initially denying the request under the PDVA. The Custodian certified that she subsequently provided a more formal response to the Complainant on December 6, 2022 maintaining the denial under the PDVA, but also noting that no records responsive to OPRA request item No. 1 existed.⁵

⁴ On December 12, 2022, the Complainant asked the Custodian to place the reasons for denial on the OPRA request form and return it to him. The Custodian responded noting that she was only required to respond, but that she was providing a copy of the form with the Township's annotations on it.

⁵ The Custodian noted that the Complainant subsequently submitted another OPRA request seeking in-part of the records at issue here. The Custodian noted that she responded again denying the records for the reasons already stated.

The Custodian maintained that no records responsive existed to OPRA request item No. 1 because PPD did not record incoming or outgoing telephone calls. The Custodian further maintained her denial to the remainder of the records under the PDVA, but also noted that PPD did not have “surveillance cameras in [s]tation” and thus no records existed to that portion of OPRA request item No. 2.

Additional Submissions:

On January 30, 2023, the Complainant filed a sur-reply to the SOI. Therein, the Complainant contended that he had an overarching need for the records sought, and especially BWC footage, because he believed that the PPD and Custodian were conspiring with the victim to have him falsely arrested. The Complainant confirmed that the underlying incident involved an accusation that he violated a restraining order. The Complainant referenced several elements of a “Preliminary Law Enforcement Incident Report” he received to add substance to the underlying issue.⁶ The Complainant contended that the Custodian should, in accordance with Pepe v. Pepe, 258 N.J. Super. 157 (May 5, 1992), be required supply evidence to allow the GRC to balance whether N.J.S.A. 2C:25-33 applies to the records sought.

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 request item No. 1

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant sought recorded calls from an incident occurring in November 2022. The Custodian responded advising that no responsive records existed because PPD did not record its incoming and outgoing telephone lines. This complaint ensured, wherein the Custodian maintained her position that no records existed. The Complainant has not provided any evidence in either his complaint or SOI sur-reply to refute this position. Thus, the GRC is compelled to find that Pusterhofer applies here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 1. Specifically, the Custodian certified in the SOI, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

⁶ While the Complainant did not state how he came into possession of the report, he noted that he had been in court the week prior and certain charges were dismissed.

OPRA request item Nos. 2-4

OPRA provides that:

The provisions of [OPRA] 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.

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

Further, the PDVA provides that “[a]ll records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.” N.J.S.A. 2C:25-33. In VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014), the Council was tasked with determining whether the custodian lawfully denied access to certain records under the PDVA. In concluding that the custodian lawfully denied access to same, the Council confirmed that the records definitively related to a domestic violence incident and noted that the PDVA included a confidentiality clause. Id. at 5.

In the matter before the Council, the Complainant sought access to BWC and security⁷ camera footage, investigation reports and records, and “probable cause”⁸ for an incident occurring on November 25, 2022. In response, the Custodian denied access to the requested records under the PDVA. This complaint followed, wherein the Complainant asserted that he should have been given access to the records so he could file a civil lawsuit. The Complainant also asserted that he believed a “cover-up” was occurring in relation to the incident in question. In the SOI, the Custodian maintained that the requested records were exempt from disclosure under PDVA.

In his sur-reply, the Complainant provided an accounting of the incident involving the allegation of violating a restraining order. The Complainant further noted that was he was in possession of a report already; however, it is unclear how he received same. Further, the Complainant demanded that the Council should apply the test performed by the Pepe Court to balance whether the PDVA applied.

A review of the evidence of record, the GRC is satisfied that the Custodian lawfully denied access to the records in question under the PDVA. Specifically, the underlying incident as described by the Complainant involved a restraining order and resulted in charges. This would obviously classify as a domestic violence issue. Ultimately, the PDVA is clear that records maintained pursuant to it are exempt from disclosure. N.J.S.A. 2C:25-33. Further, the reason of

⁷ The Custodian did note that security camera footage did not exist because the PPD did not maintain cameras within the station.

⁸ The GRC notes that this portion of the Complainant’s OPRA request is invalid on its face because “probable cause” does not identify any specific records sought. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).

disclosure is of no significance under OPRA because the PDVA does not contain exceptions to the exemption. Based on all the forgoing, it is clear that the records sought in OPRA request Nos. 2 through 4 are domestic violence records not subject to access under OPRA and the PDVA . N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree, GRC 2014-122.

Further, the Complainant's assertion that the Council needed to conduct a balancing test in accordance with Pepe is in error here. First, the Pepe decision predated OPRA's enactment by ten (10) years. Second, the trial court there was tasked with determining whether PDVA allowed plaintiff to access court records under N.J.S.A. 2C:25-33. That case did not address disclosability under OPRA's predecessor, the "Right to Know Law". Third, the court ultimately determined that disclosure was warranted based on a balancing test reminiscent of the one performed for common law access requests. The GRC notes that OPRA is clear that its provisions shall not infringe on the common law right of access. N.J.S.A. 47:1A-1. Also, the GRC has no authority to address a common law request. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).

Accordingly, the Custodian lawfully denied access to OPRA request item Nos. 2 through 4 due to an existing exemption under the PDVA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree, GRC 2014-122. Further, the Complainant's need for the records in question is of no moment: the PDVA exemption does not contemplate need-based disclosure for purposes described by the Complainant.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 1. Specifically, the Custodian certified in the SOI, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to OPRA request item Nos. 2 through 4 due to an existing exemption under the Prevention of Domestic Violence Act. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014). Further, the Complainant's need for the records in question is of no moment: the Prevention of Domestic Violence Act exemption does not contemplate need-based disclosure for purposes described by the Complainant.

Prepared By: Frank F. Caruso
Executive Director

July 23, 2024