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May 13, 2020

via email only (opra+request-11021-677b07fa@requests.opramachine.com)

Mr. Joseph Kyser

RE: OPRA Request Dated May 1, 2020

Dear Mr. Kyser,

Please be advised that this office acts as Solicitor for the Borough of Paulsboro ("Borough"). In that capacity we have been asked to respond to your Open Public Records Act ("OPRA") request submitted to the Borough Clerk's office pursuant to N.J.S.A. 47:1A-1 et seq. on May 1, 2020.

You have requested "All body camera video from the incident in Heritages parking lot on 743 Billings Ave. The date was April 29 2020 approximately at 4pm."

The body worn camera (BWC) video cannot be produced at this time as it relates to "an investigation in progress" by the Paulsboro Police Department and its release would be "inimical to the public interest" pursuant to N.J.S.A. 47:1A-3(a). Release of the BWC video at this time is premature.

Investigation in Process OPRA Exemption

For a record to be withheld pursuant to this section of OPRA, the Borough must "demonstrate that '(1) the requested records pertain to an investigation in progress by any public agency, (2) disclosure will be inimical to the public interest, and (3) the records were not available to the public before the investigation began.'" Paff v. Ocean County Prosecutor's Office, 235 N.J. 1, 24 (2018) (quoting N. Jersey Media Grp., Inc. v. Township of Lyndhurst, 229 N.J. 541, 573 (2017)).

At the time the BWC video was active, the officer was investigating suspected illegal activity based on a call from a concerned citizen. This video depicts the officer pulling over and arresting a suspect related to a greater pool of persons of interest who may be engaging in similar activity in the community.

The release of this video risks officer safety as they pursue other persons of interest and investigate potential further illegal activity. Lastly, this video depicts tactics used by the Paulsboro Police Department, which it intends to use to continue this investigation and disclosure will decrease effectiveness. Any negative consequences based on the release of this video will detrimentally and inimically harm the public by allowing these illegal activities to continue.

For these reasons, this OPRA request is denied.

Common Law Right of Access

Your request also seeks the BWC video pursuant to the common law right of access. For a requestor to receive records pursuant to this right, “(1) the person seeking access must establish an interest in the subject matter of the material; and (2) the citizen's right to access must be balanced against the State's interest in preventing disclosure.” Lyndhurst, 229 N.J. at 578 (internal citation omitted).

Within your request, no interest in the subject matter of the record was established and for this reason, the BWC video will not be provided. Even if an interest had been provided, the reasons set forth above demonstrate the Borough's great interest in withholding the video in this instance and therefore it would not be disclosed.

Thank for your understanding. Should you have any questions or concerns regarding this response, please feel free to contact this office.

Very truly yours,
MALEY GIVENS, PC

By: 
Emily K. Givens

EKG/tjd