

Borough of Cliffside Park



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October 7, 2024

via electronic mail

Thomas A. Furze

opra+request-67213-42aac31d@requests.opramachine.com

**RE: OPRA Request dated September 26, 2024
Log # 24-473**

Dear Mr. Furze:

The Records Custodian of the Borough of Cliffside Park received your Open Public Records Act (OPRA) request dated September 26, 2024. The time for response is seven business days unless extended by consent. N.J.S.A. 47:1A-5.

Your request sought access to the following pursuant to OPRA and the common law:

Please supply all BWC and any video reviewed from police report #2024-023329.

OPRA RESPONSE: Embedded in the email transmitting this response is a hyperlink to a Dropbox which contains two traffic camera video recordings capturing the motor vehicle accident that is the subject of the police report identified by your request. That part of the footage which captures evaluation and/or treatment of the victim by emergency and/or medical personnel is confidential/exempt from public access and has not been provided for that reason. N.J.S.A. 47:1A-1.1; 42 U.S.C. §1320d, et seq. (HIPAA); N.J.S.A. 47:1A-9 (privacy clause); Executive Order No. 26 (McGreevey 2002) (information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation is exempt from public access pursuant to OPRA). Moreover, the Borough of Cliffside Park does not have the technological capacity to redact the exempt/confidential information from traffic camera recordings. If a public agency does not maintain the requested record in the electronic medium or format requested, and the medium or format is not available to the public agency without a substantial amount of manipulation or programming of information technology or the services of a third party vendor, the custodian is under no obligation to convert the record to the electronic medium or format requested but need

only provide a copy in the electronic format maintained by the public agency. N.J.S.A. 47:1A-5(d). The body worn camera video recordings responsive to your request are exempt from public access and have not been provided for that reason. N.J.S.A. 47:1A-1.1; N.J.S.A. 40A:14-118.5(l)(1). See also, New Jersey Attorney General Directive 2022-1.

COMMON LAW: The common law right of access to public records is not absolute. South Jersey Pub. v. N.J. Expressway, 124 N.J. 478, 488 (1991). If the material sought are public records and the requestor has established an interest in the subject matter of the records, the Records Custodian must assess whether the requestor's asserted interest in disclosure of the materials outweighs the governmental interest in nondisclosure. Among the factors which will guide the Records Custodian's balance of these competing interests are:

- The extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- The effect disclosure may have upon persons who have given such information and whether they did so in reliance that their identities would not be disclosed;
- The extent to which agency self-evaluation, program improvement, or other decision-making will be chilled by disclosure;
- The degree to which the information sought includes factual data as opposed to evaluative reports of policymakers;
- Whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency;
- Whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials;
- Whether any statutory or regulatory provisions address disclosure or non-disclosure;
- Whether any executive or legislative policy addresses disclosure or non-disclosure;
- Whether there are other considerations present which heighten the public interest in transparency.

Loigman v. Kimmelman, 102 N.J. 98 (1986); Rivera v. Ocean Cty. Pros. Office, 250 N.J. 124 (2022); Gannett Satellite Information Network, LLC v. Tp. of Neptune, 254 N.J. 242, 257 (2023).

In order to evaluate your request for public records pursuant to the common law, the Records Custodian requires that you explain in detail your interest in the subject matter of the material requested and address the other factors relevant to the Records Custodian's determination regarding access to those materials. Gannett Satellite Information Network, LLC v. Tp. of Neptune, 254 N.J. 242, 266 (2023). Kindly provide your response in writing and the Records Custodian will respond. In the event we do not receive your response within seven (7) business days, the Records Custodian will close your request and take no further action thereon.

If your request for access to a government record has been denied or unfulfilled within the 7 business days required by law, you have a right to challenge the decision by the Records Custodian to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing a Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, New Jersey 08625, by e-mail at

grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in the Superior Court should be directed to the Court Clerk in your County.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Serkan Zoklu', written in a cursive style.

SERCAN ZOKLU
Borough Clerk

cc: Joseph Rutch, Borough Administrator
Cliffside Park Police Department