

MAYOR
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WEST DEPTFORD TOWNSHIP

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Township Administrator
Lyman Barnes

Chief Finance Officer
Christine Greenwood

Registered Municipal Clerk
Lee Ann DeHart

June 18, 2018

S.B. D'Andrea
opra+request-1801-37ef1bd0@requests.opramachine.com

Re: Open Public Records Act/Common Law Records Request

Dear S.B. D'Andrea:

The West Deptford Township Clerk's Office received your request for records pursuant to the Open Public Records Act (OPRA) and New Jersey common law on June 10, 2018. The official Records Custodian, Amy Leso, RMC, received your OPRA request on June, 10, 2018. As such, the seven (7) business day deadline to respond to your request is June 20, 2018. This response is being provided on the 5th business day after receipt of your request.

Your records request sought access to the following:

"W. Deptford officer Ptlm D Hickey 4155 conducted a pedestrian stop of Kevin Eric Schaeffer on May 18, 2018 between 9 PM and 10 PM on Parkville Station Rd in Mantua/West Deptford.

I am requesting his body cam footage because I believe it contradicts the written report in regards to Mr. Schaeffer walking with the flow of traffic.

I am also requesting any and all history of complaints of any nature against Ptlm. D Hickey 4155."

We have identified the following record(s) as responsive to your request:

05/18/18	CAD Activity Report No. 18-010886
05/18/18	AXON_Body_2_Video_2018-05-18_2126

Response to Common Law Request

The common law right to access public records depends on three requirements: (1) the records must be common law public documents, *Nero v. Hyland*, 76 N.J. 213, 222 (1978); (2) the person seeking access must "establish an interest in the subject matter of the material," *South Jersey*

Publishing Co. v. New Jersey Expressway Auth., 124 N.J. 478, 487 (1991); and (3) the citizen's right to access "must be balanced against the State's interest in preventing disclosure." *Loigman v. Kimmelman*, 102 N.J. 98 (1986).

After consultation with the Township Solicitor, we have determined that you have failed to establish a proper interest in the requested records. Your request is therefore denied.

Response to OPRA Request

After consultation with the Township Solicitor, your request for the identified BWC video is denied for the following independent reasons:

1. **Criminal Investigatory Exemption.** The identified record is a criminal investigatory record which is not required by law to be made, maintained or kept on file, and which pertains to a criminal investigation. The identified record is therefore exempt from disclosure pursuant to the criminal investigatory records exception of OPRA. N.J.S.A. 47:1A-1.1; *North Jersey Media Group, Inc. v. Township of Lyndhurst*, 229 N.J. 541 (2017); *Schulz v. N.J. State Police*, Complaint No. 2014-390 (GRC 2015).

2. **Privacy/Personal Exemption.** Portions of the identified record contain personal information for which identified individuals have a reasonable expectation of privacy. N.J.S.A. 47:1A-1; Executive Order No. 21 (McGreevey 2002); *In the Matter of the New Jersey State Fireman's Association*, 230 N.J. 259 (2017); *Burnett v. County of Bergen*, 198 N.J. 408 (2009); *Nelson v. N.J. Department of Law & Public Safety*, No. 2013-124 (GRC 2014); *Merino v. Borough of Ho-Ho-Kus*, No. 2003-110 (GRC 2004).

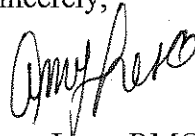
3. **Security Exemption.** Portions of the identified record may contain: (1) administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security; (b) emergency or security information or procedures for buildings or facilities which, if disclosed, would jeopardize security of the building or facility or persons therein; and/or (c) security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software. N.J.S.A. 47:1A-1; *Gilleran v. Township of Bloomfield*, 227 N.J. 159 (2016).

In response to the second part of your request, after consultation with the Township solicitor, we have determined that this request is overly broad and does not identify specific government records. As such, your request is an invalid OPRA request and is denied. When a request is "complex" because it fails to specifically identify the documents sought, then that request is not "encompassed" by OPRA. See *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007). A proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents. See *Bent v. Stafford Police*

Department, 381 N.J. Super. 30, 37 (App. Div. 2005). Custodians are not required to conduct research or create new records in response to an OPRA request.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the West Deptford Township Clerk's Office 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 the 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, NJ, 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 Superior Court should be directed to the Court Clerk in your County.

Sincerely,



Amy Leso, RMC

West Deptford Township Clerk's Office

lesoa@westdeptford.com

856-845-4004 ext. 129