



**East Brunswick Police Department
OPEN PUBLIC RECORDS ACT (OPRA)
P.O. Box 1081, East Brunswick, NJ 08816
Phone: 732-390-6922 / Email: OPRA@ebpd.net
East Brunswick Police Records Custodian**



Response Date: 03/09/2023

Requestor's Name: PSB1981

Requestor's Address: N/A

Dear PSB1981,

The East Brunswick Police Department received your Open Public Records Act (OPRA) request on March 1, 2023. The official Records Custodian, of the East Brunswick Police Department, received your OPRA request on March 1, 2023. As such, the seven (7) business day deadline to respond to your request is March 10, 2023. This response to your request is being provided to you on the 6th business day after the custodian's receipt of said request.

Your request has been assigned Request ID # 2023-082 for tracking purposes.

Your OPRA request sought access to the following record(s):

1. Incident report for case# 00-43536

Response: Access to the contents of the investigation file related to this matter is denied, as they are considered criminal investigatory records. Such records are exempt from disclosure under OPRA. pursuant to N.J.S.A. 47:1A-1.1 to -13, and Janeczko v. Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Numbers 2002-79 and 2002-80 (affirmed on appeal May 2004). Criminal investigatory records are defined as records that are held by a law enforcement agency, which pertain to any criminal investigation and of which are not required by law to be made, maintained or kept on file. Ibid. A criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. West Solloway v. Bergen County Prosecutor's Office Custodian of Records, GRC Complaint No. 2011-39; Woojin Hwang v. Bergen County Prosecutor's Office Custodian of Records, GRC Complaint No. 2011-348; Donna Janeczko v. New Jersey Department of Law and Public Safety, Division of Criminal Justice, Custodian of Record, GRC Complaint Nos. 2002-79 and 2002-80; Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46. Cf. R. 1:38-3(f)(3) as to investigative police reports under the control of a court, unless they have been admitted into evidence.

Moreover, the New Jersey Supreme Court and the New Jersey Government Records' Council have both held that records which are not "required by law to be made, maintained or kept on file," are

exempt from disclosure under OPRA when they pertain to any criminal investigation or related civil enforcement proceeding. See *N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst*, 229 N.J. 541, 556 (2017) (citing N.J.S.A. 47:1A-1.1); see also, *Kovacs v. Irvington Police Department*, GRC Complaint No. 2014-196 (January 2015) (holding and observing that the Government Records Council "has long held that police incident reports" are exempt from disclosure under OPRA as "criminal investigatory records" when they pertain to any criminal investigation or related civil enforcement proceeding, citing *Nance v. Scotch Plains Police Dep't*, GRC Complaint No. 2003-125 (January 2005); *Rivera v. Passaic Cnty. Sheriff's Office*, GRC Complaint No. 2010-152 (May 2011); and *Connelly v. Twp. of Montville*, GRC Complaint No. 2013-59 (September 2013)); *Rivera v. Town of West New York*, GRC Complaint No. 2010- 208 (February 2013), citing *Bart v. City of Passaic*, GRC Complaint No. 2007-162 (April 2008); and Executive Order No. 26 (Gov. McGreevy 2002); *Hockensmith v. Atlantic Cntv. Prosecutor's Office*, GRC Complaint No. 2014-288 (Mar. 2015) (observing that under OPRA "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed") (emphasis added and internal citations omitted).

2. Mug shot for case# 00-43536

Response: Arrest photos are exempt from disclosure pursuant to N.J.S.A. 47:1A-9 and Executive Orders 9(e) (Hughes), 69 (Whitman), and 21 (McGreevey).

You have also requested the records under the common law. Access under the common law requires that "the person seeking access must 'establish an interest in the subject matter of the material'." *Mason v. City of Hoboken*, 196 N.J. 51, 67 (2008) (quoting *Keddie v. Rutgers*, 148 N.J. 36, 50 (1997)). As your request fails to declare a particularized interest in the non-supplied requested records, upon which a balancing of interests may be assessed, access to these records is also denied under common law. See *O'Boyle v. Borough of Longport*, 218 N.J. 168, 200 (2014).

The East Brunswick Police Department reserves the right to raise any other grounds for denial not raised in this response. Failure of the East Brunswick Police Department to assert an exception or privilege does not act as a waiver of any grounds for denial. Furthermore, a reviewing Court or the Government Record's Council ("GRC") may deem a denial of access to be authorized on grounds other than those advanced by a custodian. *Paff v. Twp. of Plainsboro*, A-2122-05T2, 2007 WL 957289, at *2 (N.J. Super. Ct. App. Div. Apr. 2, 2007) affirming, *Paff v. Township of Plainsboro*, GRC Complaint No. 2005-29 (March 2006).

You have a right to challenge the decision by the East Brunswick Police Department 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 GRC by completing Denial of Access Complaint Form. You may contact the GRC by toll-free by telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at

xxx@xxx.xxxxx.xx.xx, or on the GRC's website at www.state.nj.us/grc. The Council can also answer other questions about the law.

Note that any challenge to a denial of a request for records under the common law cannot be made to the GRC, as the GRC only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court. All questions regarding complaints filed in Superior Court should be directed to the New Jersey Superior Court Clerk.

Regards,

Records Custodian
East Brunswick Police Department
1 Jean Walling Civic Center Drive
East Brunswick, NJ 08816
Email: xxxx@xxxx.xxx