



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

April 30, 2008 Government Records Council Meeting

Tina Renna
Complainant
v.
County of Union
Custodian of Record

Complaint No. 2006-124

At the April 30, 2008 public meeting, the Government Records Council (“Council”) considered the April 23, 2008 Supplemental 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 no further adjudication is required because the Complainant withdrew the matter from OAL in a prehearing conference on June 12, 2007.

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 April, 2008

Robin Berg Tabakin , Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.



David Fleisher, Vice Chairman & Secretary
Government Records Council

Decision Distribution Date: May 12, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 30, 2008 Council Meeting**

**Tina Renna¹
Complainant**

GRC Complaint No. 2006-124

v.

**County of Union²
Custodian of Records**

Records Relevant to Complaint:

Bills, receipts and vouchers pertaining to county employees receiving county-funded home internet service and laptop computers.

Request Made: May 4, 2006

Response Made: May 4, 2006

Custodian: Nicole DiRado

GRC Complaint Filed: June 26, 2006

Background

December 14, 2006

Government Records Council's ("Council") Interim Order. At its December 14, 2006 public meeting, the Council considered the (date of FR) 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, found that due to the significant question of whether or not the requested records were released with or without the redactions of the names of the employees being given taxpayer funded privileges of home internet service and laptop computers, this case should be referred to the Office of Administrative Law (OAL) for a hearing to resolve the contested facts. If determined via a fact finding hearing, that the requested records were released without the redactions of the names, as the Custodian certified, then such determination will make this complaint moot.

December 19, 2006

Council's Interim Order distributed to the parties.

January 26, 2007

¹ No legal representation listed.

² Represented by Anthony M. Orlando, Esq. (Elizabeth, NJ).

Complaint transmitted to the Office of Administrative Law (“OAL”) for further adjudication.

June 20, 2007

The complaint was referred back to the GRC because the Complainant withdrew the matter from OAL in a prehearing conference on June 12, 2007.

Analysis

No analysis is required since the Complainant withdrew the matter from OAL in a prehearing conference on June 12, 2007. Therefore, no further adjudication is required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council find that no further adjudication is required because the Complainant withdrew the matter from OAL in a prehearing conference on June 12, 2007.

Approved By:

Catherine Starghill, Esq.
Executive Director

April 23, 2008

INTERIM ORDER
December 14, 2006 Government Records Council Meeting

Tina Renna
Complainant
v.
County of Union
Custodian of Record

Complaint No. 2006-124

At the December 14, 2006 public meeting, the Government Records Council (“Council”) considered the December 7, 2006 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 due to the significant question of whether or not the requested records were released with or without the redactions of the names of the employees being given taxpayer funded privileges of home internet service and laptop computers, this case should be referred to the Office of Administrative Law (OAL) for a hearing to resolve the contested facts. If determined via a fact finding hearing, that the requested records were released without the redactions of the names, as the Custodian certified, then such determination will make this complaint moot.

Interim Order Rendered by the
Government Records Council
On The 14th Day of December, 2006

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

Decision Distribution Date: December 19, 2006

**Findings and Recommendations of the Executive Director
December 14, 2006 Council Meeting**

Tina Renna¹
Complainant

GRC Complaint No. 2006-124

v.

County of Union²
Custodian of Records

Records Relevant to Complaint:

Bills, receipts and vouchers pertaining to county employees receiving county-funded home internet service and laptop computers.

Request Made: May 4, 2006

Response Made: May 4, 2006

Custodian: Nicole DiRado

GRC Complaint Filed: June 26, 2006

Background

May 4, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests to inspect/view and receive a copy of the bills, receipts and vouchers pertaining to county employees receiving county-funded home internet service and laptop computers.

May 4, 2006

E-mail from Marlana M. Russo, Office Manager to Complainant. The first response to the OPRA request is on the same date of the request. The Office Manager asks the Complainant to clarify the timeframe of the records being requested.

May 4, 2006

Complaint's response to the Office Manager. The Complainant seeks documentation for 2005 and 2006, year to date.

May 4, 2006

Custodian's response to the Complainant. The Custodian states that the office received the OPRA request for 1) bills, receipts and vouchers pertaining to county employees receiving county-funded home internet service and laptop computers for 2005 and 2006 to date, 2) any documentation of emergency management certifications for Union County Manager George Devanney, and 3) back-up documentation for Resolution 2006-412. The Custodian then informed the Complainant that OPRA requires that a

¹ No legal representation listed.

² Represented by Anthony M. Orlando, Esq. (Elizabeth, NJ).

response be provided within seven (7) business days, beginning the first business day after receipt of the request, and that a response would be prepared by May 15, 2006.

(The OPRA request form completed by the Complainant did not indicate that the Complainant requested any documentation of emergency management certifications for Union County Manager George Devanney or back-up documentation for Resolution 2006-412 as stated by the Custodian. It is unclear why these records were addressed by the Custodian.)

May 15, 2006

E-mail from Office Manager to Complainant. The Custodian states that fifty-one (51) pages have been compiled and the cost to purchase same is \$20.25. Also, the Custodian states that some additional time will be required to complete the request, but the Custodian is expected to have a response by Friday, May 19, 2006.

May 19, 2006

E-mail from Office Manager to Complainant. The Custodian states that pursuant to the conversation between the Custodian and Complainant, 1,222 additional pages have been compiled, including the previously discussed fifty-one (51) pages, which now total 1,273 pages to date. The purchase of same is \$325.75, but the documents may be viewed at no cost. Also, the Custodian states that the final document count and purchase price will be provided by Monday, May 22, 2006.

May 19, 2006

Email from Complainant to Office Manager. The Complainant states that pursuant to the conversation between her and the Office Manager, she instructed the Office Manager to retrieve the five boxes from archives which the Complainant paid for on this date.

May 22, 2006

E-mail from Office Manager to Complainant. The Custodian states that all records responsive to the Complainant's OPRA request amounts to 2,032 pages. However, because of the volume of documents and the redactions required, additional time will be needed to complete the request. The Custodian expects that the entire set of documents will be ready for inspection and/or purchase by approximately May 30, 2006. Also, the Custodian states that the Complainant is still welcome to come in and view and/or purchase the documents that have been compiled and redacted thus far.

May 30, 2006

E-mail from Office Manager to Complainant. The Custodian states that the OPRA request is complete and the balance of the documents are ready for inspection and/or purchase.

June 26, 2006

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachment:

- Complainant's OPRA Request dated May 4, 2006.

The Complainant asserts being denied complete access to the records requested and states that Union County did not send any documentation, such as a cover letter, to justify or explain the redactions. The Complainant also states that N.J.S.A. 47:1A-6 burdens Union County with providing that the redactions are lawful. The Complainant further asserts that N.J.S.A. 47:1A-5.g. requires Union County to indicate the specific basis for any denial of access.

Additionally, the Complainant acknowledges that besides stating the specific basis for redactions, Union County is also required to “produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality.” Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 323, 382-83 (App. Div. 2003). Also, the Complainant asserts that Union County is required to describe the redacted text and explain its reasons in a manner that “will enable other parties to assess the applicability of the privilege or protection.” Paff v. New Jersey Department of Labor, Board of Review, 279 N.J. Super. 346, 354-55 (2005) (quoting R. 4:10-2(e)).

The Complainant asks that the GRC a) find Union County in violation of OPRA, and b) order Union County to provide the unredacted bills, receipts and vouchers pertaining to county employees receiving county-funded home internet service and laptop computers for 2005 and 2006 to date.

June 28, 2006

Offer of Mediation sent to both parties.

June 28, 2006

The Complainant declines mediation and requests that the GRC begin a full investigation of this complaint.

June 30, 2006

The Custodian agreed to mediate this complaint.

July 11, 2006

Request for Statement of Information sent to the Custodian.

August 1, 2006

Custodian’s Statement of Information (“SOI”) with the following attachments:

- May 4, 2006 Complainant’s OPRA request.
- May 4, 2006 e-mail from Office Manager to Complainant.
- May 4, 2006 e-mail from Custodian to Complainant.
- May 4, 2006 e-mail from Complainant to Office Manager.
- May 15, 2006 e-mail from Office Manager to Complainant.
- May 19, 2006 e-mail from Office Manager to Complainant.
- May 19, 2006 e-mail from Complainant to Office Manager.
- May 22, 2006 e-mail from Office Manager to Custodian (Assistant County Counsel was copied).
- May 30, 2006 e-mail from Office Manager to Complainant.
- Custodian’s Government Records Request Response Form.

The Custodian asserts that all applicable 2005 and 2006 invoices from Verizon and Comcast, including all purchase orders for payments were provided to the Complainant for inspection. The Custodian further asserts that on May 25, 2006, the Complainant purchased a Comcast bill dated June 8, 2005 and a Verizon bill dated November 11, 2005. The Custodian then states that on June 16, 2006, the Complainant purchased several of the records she requested (including purchase orders and bills).

The Custodian asserts that each redaction made to the Verizon or Comcast bills purchased by the Complainant on June 16, 2006, were made to protect certain sensitive information, such as account numbers, home addresses and unlisted telephone numbers. The Custodian also asserts that additional information was redacted from personal Verizon or Comcast bills that did not pertain to the reason for reimbursement. The Custodian further asserts that these redactions were made to protect the reasonable expectations of personal privacy of the individuals. Furthermore, the Custodian asserts that County purchase orders were only redacted to protect unlisted telephone numbers, usually depicted as the account number or invoice number on the bill.

September 29, 2006

Balancing Test request sent to the Complainant and to the Custodian.

October 5, 2006

The Complainant responds to the balancing test.

October 10, 2006

The Custodian responds to the balancing test.

October 11, 2006

The Complainant's response to the Custodian's balancing test responses. The Complainant states that the Custodian certified in her response that the Complainant had made a habit of following, photographing and videotaping County employees while on their own time, and interests of personal safety, including the prevention of unwarranted harassment are also at issue. The Complainant states that the Custodian has no proof to back up such a slanderous statement, but however, the Complainant has proof of the opposite to be true, showing that County employees harassing the public when they seek information as to how their tax dollars are being spent, and when they try to participate in the democratic process.³

October 23, 2006

Letter from the GRC to the Complainant. The GRC requests that the Complainant provide credible evidence refuting the Custodian's certification that the names of all employees provided were not redacted.

November 1, 2006

E-mail from the Complainant to the GRC. The Complainant certifies that the employees' names were not on the requested records that she received.

³ The Complainant makes references to articles and editorials as proof of County employees harassing the public.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides that:

“...the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person...” N.J.S.A. 47:1A-5.a.

OPRA states that:

“[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” N.J.S.A. 47:1A-5.e.

OPRA also states that:

“...[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis thereof on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5.g.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant asserts being denied complete access to the records requested on May 4, 2006. The Complainant further asserts that the County of Union did not send any documentation, such as a cover letter, to justify or explain the redactions. The

Complainant also states that N.J.S.A. 47:1A-6 burdens Union County with providing that the redactions are lawful. The Complainant further asserts that N.J.S.A. 47:1A-5.g. requires Union County to indicate the specific basis for any denial of access.

The Complainant acknowledges that besides stating the specific basis for redactions, Union County is also required to “produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality.” Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 323, 382-83 (App. Div. 2003). Also, the Complainant asserts that Union County is required to describe the redacted text and explain its reasons in a manner that “will enable other parties to assess the applicability of the privilege or protection.” Paff v. New Jersey Department of Labor, Board of Review, 279 N.J. Super. 346, 354-55 (2005) (quoting R. 4:10-2(e)).

The Custodian asserts that each redaction made to the Verizon or Comcast bills were made to protect certain sensitive information, such as account numbers, home addresses, and unlisted telephone numbers. The Custodian also asserts that additional information was redacted from personal Verizon or Comcast bills that did not pertain to the reason for reimbursement. The Custodian further asserts that these redactions were made to protect the reasonable expectations of personal privacy of the individuals. The Custodian states that County purchase orders were only redacted to protect unlisted telephone numbers, usually depicted as the account number or invoice number on the bill.

Furthermore, since the Complainant requests information that could adversely affect the privacy of the citizens, it is necessary to employ the balancing test set forth by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1, 82 (1995) and utilized in previous GRS cases.

In Merino v. Ho-Ho-Kus, GRC Complaint 2003-110 (July 8, 2004), the Council addressed the citizen’s reasonable expectation of privacy pursuant to N.J.S.A. 47:1A-1 and found that the New Jersey Supreme Court, Appellate Division held that the GRC must enforce OPRA's declaration, in N.J.S.A. 47:1A-1, that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 368-69 (App. Div. 2003). See also National Archives and Records Administration v. Favish, 541 U.S. 157, 124 S.Ct. 1570 (U.S. March 30, 2004) (personal privacy interests are protected under FOIA).

The New Jersey Supreme Court has indicated that, as a general matter, the public disclosure of an individual's home address "does implicate privacy interests." Doe v. Poritz, 142 N.J. 1, 82 (1995). The Court specifically noted that such privacy interests are affected where disclosure of a person's address results in unsolicited contact. The Court quoted with approval a federal court decision that indicated that significant privacy concerns are raised where disclosure of the address "can invite unsolicited contact or intrusion based on the additional revealed information." *Id.* (citing Aronson v. Internal Revenue Service, 767 F. Supp. 378, 389 n. 14 (D. Mass. 1991)).

The Supreme Court concluded that the privacy interest in a home address must be balanced against the interest in disclosure. It stated that the following factors should be considered:

1. The type of record requested;
2. The information it does or might contain;
3. The potential for harm in any subsequent nonconsensual disclosure;
4. The injury from disclosure to the relationship in which the record was generated;
5. The adequacy of safeguards to prevent unauthorized disclosure;
6. The degree of need for access;
7. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access [*Id.* at 87-88].

The foregoing criteria was applied accordingly by the Court in exercising its discretion as to whether the privacy interests of the individuals named in the summonses are outweighed by any factors militating in favor of disclosure of the addresses.

To ascertain the degree of need for access from the Complainant, the GRC asked the Complainant the following questions:

1. Why do you need the requested record(s) or information?
2. How important is the requested record(s) or information to you?
3. Do you plan to redistribute the requested record(s) or information?
4. Will you use the requested record(s) or information?

| Questions | Custodian’s Response |
|--|--|
| Type of record request: | 2005 and 2006 invoices from Verizon and Comcast, including all related County of Union purchase orders. |
| The type of information it does or might contain: | The records contain certain information that has been redacted, such as account numbers, home addresses, unlisted telephone numbers and services not paid for with taxpayer dollars. The records also contain information detailing the type of services provided by Comcast or Verizon at County expense. Additionally, the records contain information such as the name of the employee utilizing the service, which was not redacted. |
| The potential for harm in any subsequent nonconsensual disclosure: | The potential for harm in any subsequent nonconsensual disclosure of this type of information is obvious. The subject matter at issue includes personal information regarding both Freeholders and/or County employees, including account numbers, home addresses, unlisted telephone numbers and services not paid for with taxpayer dollars. While expenditures of taxpayer’s funds and job-related performance may always be ripe for public scrutiny, the personal information belonging to Freeholders and /or County employees should remain private. Additionally, as this requestor has made a habit of following, photographing, and videotaping County |

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|--|---|
| | employees while on their own time, interests of personal safety, including the prevention of unwarranted harassment, are also at issue. |
| The injury from disclosure to the relationship in which the record was generated: | The records requested are issued by Comcast and Verizon and sent directly each month to the County of Union for payment of services provided. Potential injury from any disclosure of the information at issue will be unrelated to the generation of the records. |
| The adequacy of safeguards to prevent unauthorized disclosure: | The County of Union maintains full control of the records at issue. Safeguards exist to ensure that the types of information at issue are not available to the public. |
| The degree of need for access: | N/A |
| Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access: | The public has nothing to gain from the disclosure of the specific Comcast and Verizon account numbers. Likewise, the home address of Freeholders and/or County employees should not be made available to members of the public. There is simply no justification for this type of information to be made available to members of the public since any subsequent disclosure could jeopardize the security of their information and subject the individuals to unwarranted invasions of their personal privacy. |

| Questions | Complainant's Response |
|---|---|
| Why do you need the requested record(s) or information? | To ascertain what county employees are being given taxpayer funded privileges of home internet service and laptop computers. |
| How important is the requested record(s) or information to you? | It is important for the Union County taxpayers to know what county employees are being given taxpayer funded privileges of home internet service and laptop computers. |
| Do you plan to re-distribute the requested record(s) or information? | If the Complainant finds abuse of the public trust within these records then she will publicize them. If the Complainant doesn't find any abuse, then the records will be of no interest to anyone. |
| Will you use the requested record(s) or information for unsolicited contact of the individuals named on the list? | The Complainant has no wish to contact the individuals, and does not wish to be furnished with their contact information. The Complainant only wants the names of the employees who are being given taxpayer funded privileges of home internet service and laptop computers. |

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. 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.

While the Custodian has certified in her balancing test responses that the names of the employees were not redacted, the Complainant has certified that such names were redacted. Due to the significant question of whether or not the requested records were

released with or without the redactions of the names of the employees being given taxpayer funded privileges of home internet service and laptop computers, this case should be referred to the Office of Administrative Law (OAL) for a hearing to resolve the contested facts. If determined via a fact finding hearing, that the requested records were released without the redactions of the names, as the Custodian certified, then such determination will make this complaint moot.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that due to the significant question of whether or not the requested records were released with or without the redactions of the names of the employees being given taxpayer funded privileges of home internet service and laptop computers, this case should be referred to the Office of Administrative Law (OAL) for a hearing to resolve the contested facts. If determined via a fact finding hearing, that the requested records were released without the redactions of the names, as the Custodian certified, then such determination will make this complaint moot.

Prepared By:

Tiffany L. Mayers
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

December 7, 2006