



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511
Fax: 609-633-6337
E-mail: grc@dca.state.nj.us
Web Address:
www.nj.gov/grc

COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

January 30, 2008 Government Records Council Meeting

Abdiel Avila
Complainant

Complaint No. 2007-286

v.

NJ Department of State
Custodian of Record

At the January 30, 2008 public meeting, the Government Records Council (“Council”) considered the January 23, 2008 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted adopted the entirety of said findings and recommendations by majority vote. The Council, therefore, finds that:

1. Because the Custodian responded within the statutorily mandated seven (7) business days providing three (3) records and stating that no other records responsive exist, the Custodian has not violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. Because the Custodian certifies that he did not receive an OPRA request dated on or about October 18, 2007 from the Complainant, the complaint is without a reasonable factual basis to pursue pursuant to Megargal v. NJ Department of Military and Veterans Affairs, GRC Complaint No. 2007-250 (October 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 January, 2008

Robin Berg Tabakin, Vice Chairman
Government Records Council

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

Janice Kovach
Government Records Council

Decision Distribution Date: February 1, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Abdiel Avila¹
Complainant**

GRC Complaint No. 2007-286

v.

**New Jersey Department of the State²
Custodian of Records**

Records Relevant to Complaint: The Public Oath of Office and Bonding Insurance for the following:

1. Joshua M. Ottenberg, Camden County Prosecutor.
2. Christine Meyers, Camden County Assistant Prosecutor.
3. Gladys E. Rodriguez, Camden County Assistant Prosecutor.
4. Donna M. Spinossi, Camden County Assistant Prosecutor.
5. Thomas A. Brown, JSC, Camden Superior Court.
6. Stephen Holden, JSC, Camden Superior Court.
7. Robert C. Millenky, JSC, Camden Superior Court.
8. Eric Taylor, Warden of Camden County Correctional Facility.
9. Jon Corzine, Governor.
10. Stuart Rabner, Chief Justice of the Supreme Court of New Jersey.
11. Anne Milgram, Attorney General.
12. John M. Palm, Secretary of Attorney Ethics Committee of District IV.
13. Cheryl Hendler Cohen, Camden County Prosecutor's Office.
14. Julio Rios, Detective #1052, Camden Police Department.
15. A.D. Benson, Detective #170, Camden Police Department.
16. Christina Molnar, New Jersey State Police, Office of Forensic Science.
17. Current Chief of Police, Camden.
18. Current Chief of Camden Sheriff Department.
19. Current Foreperson for the Camden County Grand Jury Unit and Address.

Request Made: July 23, 2007; on or about October 18, 2007³

Response Made: August 3, 2007

Custodian: Justin Zimmerman

GRC Complaint Filed: November 15, 2007

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Complainant cites July 23, 2007 and October 18, 2007 as the dates of the requests; however, the Complainant did not provide a copy of his October 18, 2007 OPRA request.

Background

July 23, 2007

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter specifically referencing the Open Public Records Act.

July 26, 2007

Custodian receives and date stamps the Complainant's July 23, 2007 OPRA request.⁴

August 3, 2007

Custodian's Response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the sixth (6th) business day following receipt of such request. The Custodian provides copies of the written Oaths of Office for Jon Corzine, Stuart Rabner and Anne Milgram. The Custodian further states that the New Jersey Department of the State does not maintain any other records responsive to the Complainant's request. The Custodian suggests that the Complainant contact Camden County for requested records relating to Camden County employees.

November 15, 2007

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

- Complainant's OPRA request dated July 23, 2007
- Oaths of Office for Jon Corzine, Stuart Rabner and Anne Milgram.
- Complainant's Agreement to Mediate dated November 15, 2007.

The Complainant states that he submitted an OPRA request to the New Jersey Department of the State on July 23, 2007. The Complainant states that partial access was granted. The Complainant asserts that he submitted a second OPRA request on October 18, 2007. The Complainant asserts that he received no response to his second OPRA request.

December 13, 2007

Offer of Mediation sent to the Custodian.

December 13, 2007

The Custodian provides a copy of the Complainant's file via hand delivery to the GRC. The Custodian includes a copy of the Complainant's date stamped requests (July 23, 2007 and July 30, 2007), and the Custodian's August 3, 2007 response to the Complainant's July 23, 2007 and July 30, 2007 OPRA requests.⁵

⁴ The Custodian received and date stamped a duplicate copy of the Complainant's July 23, 2007 OPRA request on July 30, 2007.

⁵ The additional correspondence postmarked between October 25, 2007 and October 29, 2007 is not relevant to this complaint.

December 13, 2007

E-mail from the GRC to the Custodian. The GRC requests that the Custodian legally certify to the following:

1. Whether the Custodian's August 3, 2007 response applies to both requests?
2. Whether the Custodian received an OPRA request dated on or about October 18, 2007?

December 14, 2007

Custodian's Certification. The Custodian certifies that he received two identical OPRA requests from the Complainant on July 26, 2007 and July 30, 2007. The Custodian further certifies that his letter dated August 3, 2007 attaching written Oaths of Office for Jon Corzine, Stuart Rabner and Anne Milgram is in response to both of these OPRA requests.

The Custodian also certifies that he did not receive an OPRA request from the Complainant dated on or about October 18, 2007. The Custodian certifies that the New Jersey Department of the State did receive several miscellaneous submissions on October 29, 2007 that were deemed not to be OPRA requests for records from the New Jersey Department of the State.⁶

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:

"[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and

⁶ These submissions were included as part of the Complainant's file hand delivered to the GRC on December 13, 2007. OPRA requests relevant to two additional Denial of Access complaints were included in this submission. The additional Denial of Access complaints will be adjudicated separately.

promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

OPRA further provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

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.

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. A custodian must also release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1.

In this complaint, the Complainant asserts that he received partial disclosure of the records responsive to his July 23, 2007 OPRA request and no response to his October 18, 2007 OPRA request. Conversely, the Custodian certifies that two (2) identical requests were received on July 26, 2007 and July 30, 2007. The Custodian further certifies that he responded in writing on August 3, 2007, providing three (3) records and stating that no other records responsive exist and suggesting that the Complainant contact Camden County for requested records relating to Camden County employees. The Custodian finally certifies that he did not receive an OPRA request from the Complainant dated on or about October 18, 2007.

The Custodian responded to the Complainant’s OPRA request in writing on the sixth (6th) business day following receipt of such request. OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i.

Because the Custodian responded to the Complainant’s July 26, 2007 and July 30, 2007 OPRA requests granting access to all records responsive in his possession, the Custodian has not violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

Additionally, in Megargal v. NJ Department of Military and Veterans Affairs, GRC Complaint No. 2007-250 (October 2007), the Custodian certified that she did not

receive a records request from the Complainant. The GRC held that because the Custodian certified that she did not receive a records request from the Complainant, the complaint was without a reasonable factual basis to pursue. Similarly, in this case, the Custodian certifies that although he received correspondence from the Complainant around October 18, 2007, none of that correspondence referenced OPRA or could otherwise be considered a request for records from the New Jersey Department of the State pursuant to OPRA.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian responded within the statutorily mandated seven (7) business days providing three (3) records and stating that no other records responsive exist, the Custodian has not violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. Because the Custodian certifies that he did not receive an OPRA request dated on or about October 18, 2007 from the Complainant, the complaint is without a reasonable factual basis to pursue pursuant to Megargal v. NJ Department of Military and Veterans Affairs, GRC Complaint No. 2007-250 (October 2007).

Prepared By:

Frank F. Caruso
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

January 23, 2008