



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

June 11, 2009 Government Records Council Meeting

Larry A. Kohn
Complainant

Complaint No. 2007-298

v.

Township of Livingston (Essex)
Custodian of Record

At the June 11, 2009 public meeting, the Government Records Council (“Council”) considered the May 20, 2009 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:

1. The GRC oversees the disclosure and nondisclosure of documents, not the content of documentation. *See* Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005).
2. Because the Custodian certifies that all records responsive to the Complainant’s OPRA request were made available to the Complainant and since the Complainant has not provided credible evidence to refute the Custodian’s certification, the Custodian has not unlawfully denied access to the requested records pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).

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 11th Day of June, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach
Government Records Council

Decision Distribution Date: June 16, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 11, 2009 Council Meeting**

**Larry A. Kohn¹
Complainant**

GRC Complaint No. 2007-298

v.

**Township of Livingston (Essex)²
Custodian of Records**

Records Relevant to Complaint:³

2007 Budget work papers for the following:

- Administration and Executive
- Human Resources
- Clerk
- Collection of Taxes
- Police
- Broadcast Authority
- Civic Center - Master Plan
- Capital Budget – Municipal Building Improvements

Request Made: August 16, 2007

Response Made: August 28, 2007

Custodian: Glenn Turtletaub

GRC Complaint Filed: December 5, 2007⁴

Background

August 16, 2007

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

August 20, 2007

Custodian's Memorandum to the Township Manager and the Deputy Manager/Chief Financial Officer forwarding the Complainant's OPRA request. The Custodian asks that the Manager and Deputy Manager provide any of the requested records in their possession to the Custodian, state why the records cannot be provided, or give a date when the records will be available.

¹ No legal representation listed on record.

² Represented by Sharon Weiner, Esq., of Scarinci & Hollenbeck, LLC (Lyndhurst, NJ).

³ Complainant requested additional records which are not the subject of this complaint.

⁴ The GRC received the Denial of Access Complaint on said date.

August 28, 2007

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventh (7th) business day following receipt of such request.⁵ The Custodian states that documents responsive to the request are available for review or duplication.

September 4, 2007

Letter from the Complainant to the Custodian. The Complainant states that after reviewing the documents provided by the Custodian, the Complainant claims he was not shown work papers with backup detail for the 2007 budget figures for Personnel- Other Expenses.

October 1, 2007

Letter from the Complainant to the Custodian. The Complainant states that he is still waiting for budget work papers.

October 8, 2007

Letter from the Custodian to the Complainant. The Custodian states that pursuant to a discussion with the Complainant, 2007 budget work papers are available for review and photocopying.

October 17, 2007

Letter from the Complainant to the Custodian. The Complainant attaches notes regarding his October 17, 2007 review of documents. The Complainant states that he was shown a 2007 Budget Binder but there was no information for several sections listed in the binder. The Complainant also states that an additional two (2) sections listed in the binder did not have complete information. The Complainant states that this OPRA request for budget work papers has not been satisfied.

Complainant asserts that *N.J.A.C. 5:30-3.5* sets forth budget information which is required to be made available to the public, including supporting documentation that provides appropriate detail covering the make up of any revenue or appropriation, as well as schedules, lists and estimates utilized by the governing body in its final deliberations.

November 12, 2007

Letter from the Complainant to the Custodian. The Complainant attaches a summary detailing the status of documents he requested in the OPRA request which is the basis of this complaint.⁶ The Complainant concludes that the request for 2007 budget work papers is still outstanding. The Complainant states that he was not shown work papers on September 4, 2007, and that the information he was shown on October 17, 2007 was not responsive to his request. Further, the Complainant states that he previously provided the regulatory reference regarding the type of supporting budget information that is required to be made available to the public.

⁵ The Custodian certifies that he received the OPRA request on August 17, 2007.

⁶ Complainant includes additional documentation which is irrelevant to the adjudication of this complaint. Larry A. Kohn v. Township of Livingston (Essex), 2007-298 – Findings and Recommendations of the Executive Director

November 22, 2007

Letter from the Complainant to the Custodian. The Complainant references his November 12, 2007 correspondence and states that he considers items from his August 16, 2007 OPRA request as still outstanding.

November 28, 2007

Letter from the Complainant to the Custodian. The Complainant confirms that on this date he reviewed 2007 budget work papers for another two (2) sections listed in the Budget Binder. The Complainant also states that he was given access to Police Department budget work papers. The Complainant provides a summary listing seven (7) items from his OPRA request which are still outstanding.

December 5, 2007

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

- Complainant’s OPRA request dated August 16, 2007.
- Letter from the Custodian to the Complainant dated August 28, 2007.
- Letter from the Complainant to the Custodian dated September 4, 2007.
- Letter from the Complainant to the Custodian dated October 1, 2007.
- Letter from the Custodian to the Complainant dated October 8, 2007.
- Letter from the Complainant to the Custodian dated October 17, 2007, attaching notes regarding documents to which he was provided access on October 17, 2007.
- Letter from the Complainant to the Custodian dated November 12, 2007, attaching a detailed schedule of correspondence related to each of the thirteen items on the August 16, 2007 OPRA request.⁷
- Letter from the Complainant to the Custodian dated November 22, 2007.
- Letter from the Complainant to the Custodian dated November 28, 2007, attaching a summary of outstanding OPRA-requested documents.⁸

The Complainant asserts that at the November 19, 2007 Township of Livingston Council meeting, the Township Manager stated that there were no 2007 budget work papers such as backup schedules, estimates or supporting documentation for Municipal Building Improvements in the Capital Budget. The Complainant alleges that this statement conflicts with the Custodian’s statement that documents were available for review.

The Complainant alleges that during a November 28, 2007 conversation with the Custodian, the Custodian stated that the reason he was having problems providing budget work papers was because the Custodian’s Budget Binder was incomplete and sections were missing because he gave other officials documents during budget meetings.

The Complainant did not agree to mediate this complaint.

⁷ Additional schedule pages were attached which are not relevant to this request.

⁸ Additional documents were attached which are not relevant to this complaint.

December 12, 2007

Request for the Statement of Information sent to the Custodian.

December 28, 2007

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated August 16, 2007.
- Memorandum from the Custodian to the Township Manager and the Deputy Manager/Chief Financial Officer dated August 20, 2007.
- Letter from the Custodian to the Complainant dated August 28, 2007.
- Letter from the Custodian to the Complainant dated October 8, 2007.
- Township of Livingston Budget Preparation Worksheet - Mayor and Council.
- Township of Livingston Budget Preparation Worksheet - Human Resources.
- Township of Livingston Budget Preparation Worksheet - Township Clerk.
- Township of Livingston Budget Preparation Worksheet - Collection of Taxes.
- Township of Livingston Budget Preparation Worksheet – Division of Police.
- Township of Livingston Budget Preparation Worksheet – Livingston Broadcast Committee.
- Livingston Police Department 2007 Budget Request.
- Capital Project Requests 2007.
- TV-34 2007 Budget Requests.⁹

The Custodian certifies that the Complainant was given access to the following budget preparation worksheets on August 30, 2007:

1. Mayor and Council
2. Human Resources
3. Town Clerk
4. Collection of Taxes
5. Division of Police – Police Dispatch/911
6. Livingston Broadcast Committee

The Custodian further certifies that the Complainant was given access to the following on October 17, 2007:

1. Clerk's 2007 Budget Request.
2. Police Department 2007 Budget Request.
3. Capital Project Requests 2007.
4. TV-34 Budget Requests.
5. Finance Department 2007 Budget Request.

The Custodian states that the Complainant was advised that documents constituting personnel matters would not be provided.

⁹ Additional documents were attached to the SOI which are not relevant to the adjudication of this complaint.

The Custodian certifies that his search for the requested records involved forwarding the Complainant's OPRA request to the Township Manager and Deputy Township Manager/Chief Financial Officer. The Custodian asserts that the Township Manager and the Deputy Manager/Chief Financial Officer are the persons who would have knowledge of the existence and location of any responsive documents. The Custodian states that the Township Manager directed the Custodian's assistant to the 2007 Budget Binder and advised that there were no budget worksheets related to the Civic Center Master Plan and Capital Budget Municipal Building Improvements. The Custodian states that documents entitled "Budget Worksheets" were provided to the Complainant for review.

The Custodian certifies that the budget preparation worksheets which were provided to the Complainant on August 30, 2007 contained entries for personnel and other expenses for the departments listed in the Complainant's OPRA request. The Custodian further certifies that the sections of the 2007 Budget Binder that the Complainant claims are missing papers never contained any documents. The Custodian also attaches Certifications from Michele Meade, Township Manager; Russell Jones, Jr., Deputy Township Manager; Renee Resky, Assistant to the Township Clerk; Arlene Johnson, member of the Township Council; and Charles August, member of the Township Council. The certifications indicate that the 2007 Budget Binder which the Complainant was shown was the full and complete binder which was given to the Township Council members. The Township Manager further certifies that the sections the Complainant claims were missing pages never contained any documents.

The Custodian asserts that the Complainant was provided with every document in the Township's possession that is responsive to the original OPRA request and the Complainant's subsequent clarifications and modifications to the OPRA request. In addition, the Custodian asserts that the budget materials provided to the Complainant comply with the requirements of *N.J.A.C. 5:30-3.5* which was referenced by the Complainant.

The Custodian asserts that the Complainant has filed numerous OPRA requests with the Township for these or similar records and the Custodian has exerted considerable time and energy in an effort to comply with these requests. The Custodian seeks direction from the GRC as to how to respond to the Complainant's regular submission of requests without disrupting the operations of the Township to the detriment of the other residents.

January 11, 2008

The Complainant's response to the Custodian's SOI. The Complainant asserts that he was not previously shown some of the documents attached to the Custodian's SOI, but states that the documents do not contain the detail necessary to support the budget appropriations. Specifically, the Complainant states that the documents do not contain salary and wage information and further argues that there must be documents other than the work papers contained in the 2007 Budget Binder.¹⁰ Finally, the Complainant alleges that, except for the Police Department documents, he has not

¹⁰ The Complainant states that he previously acknowledged being shown Police Department budget work papers and that TV 34 budget information was not part of his OPRA request.

previously reviewed the documents attached to the Custodian's SOI and that the Custodian fails to state when these documents were provide.

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 ... The terms *shall not include* inter-agency or intra-agency *advisory, consultative, or deliberative material.*" (Emphasis added.) N.J.S.A. 47:1A-1.1.

Regulations governing the release of budget information state:

"...each local unit shall make available to the public such supporting documents that provides appropriate detail covering the makeup of any revenue or appropriation." *N.J.A.C. 5:30-3.5(b)*.

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. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. 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.

Further, *N.J.A.C. 5:30-3.5(b)* requires that municipalities shall make available to the public documents which provide detail to support budget revenues or appropriations.

The Complainant requested 2007 budget work papers for several township departments. The Custodian provided access to documents on at least three (3) occasions. However, the Complainant continues to assert that the documents do not contain the necessary detail to support the budget appropriations and that there must be other documents. The Custodian certifies that all documents responsive to the Complainant's OPRA request have been provided.

In this complaint, the Custodian did provide the budget work papers to the Complainant. However, the Complainant contends that there should be additional documents which contain more detail to support the budget appropriations. However, the GRC oversees the disclosure and nondisclosure of documents, not the content of documentation. *See Kwanzaa v. Department of Corrections*, GRC Complaint No. 2004-167 (March 2005).

Moreover, in *Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005), the Custodian stated in the SOI that one (1) record responsive to the Complainant's March 2, 2005, OPRA request was provided and that no other records responsive existed. The Complainant contended that she believed more records responsive did, in fact, exist. The GRC requested that the Custodian certify as to whether all records responsive had been provided to the Complainant. The Custodian subsequently certified on August 1, 2005 that the record provided to the Complainant was the only record responsive. The GRC held that:

“[t]he Custodian certified that the Complainant was in receipt of all contracts and agreements responsive to the request. The Custodian has met the burden of proving that all records in existence responsive to the request were provided to the Complainant. Therefore there was no unlawful denial of access.”

Because the Custodian certifies that all records responsive to the Complainant's OPRA request were made available to the Complainant and since the Complainant has not provided credible evidence to refute the Custodian's certification, the Custodian has not unlawfully denied access to the requested records pursuant to *Burns supra*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The GRC oversees the disclosure and nondisclosure of documents, not the content of documentation. *See Kwanzaa v. Department of Corrections*, GRC Complaint No. 2004-167 (March 2005).
2. Because the Custodian certifies that all records responsive to the Complainant's OPRA request were made available to the Complainant and since the Complainant has not provided credible evidence to refute the Custodian's certification, the Custodian has not unlawfully denied access to the requested records pursuant to *Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005).

Prepared By: Elizabeth Ziegler-Sears, Esq.
Case Manager/Staff Attorney

Approved By: Catherine Starghill, Esq.
Executive Director

May 20, 2009