



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

January 30, 2008 Government Records Council Meeting

Diomedes Valenzuela
Complainant

Complaint No. 2007-54

v.

Township of Irvington (Essex)
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 unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, accepts the settlement as reached by the parties at the Office of Administrative Law.

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.



David Fleisher, Secretary
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**

**Diomedes Valenzuela¹
Complainant**

GRC Complaint No. 2007-54

v.

**Township of Irvington²
Custodian of Records**

Records Relevant to Complaint:

1. Copy of Emergency Medical Log Sheet for November 27, 2001 for all shifts.
2. Printout of/from in-house computer of Unit 105's activity on November 27, 2001. The printout should depict times, locations, action, or activity. The printout should outline all activity in addition to the following: RB # 01-52562, 01-52566, 01-52570, 01-52576, 01-52579, 01-52584, 01-52611, 01-52620, 01-52619, 01-52627 and 01-52633.
3. Inspect and receive a copy of the original communications' radio and telephone recording of an off duty arrest incident involving Officer Diomedes Valenzuela

Request Made: November 27, 2006

Response Made: July 16, 2007

Custodian: Municipal Clerk Harold Wiener and Police Chief Michael Chase

GRC Complaint Filed: January 16, 2007

Background

November 27, 2006

Complainant's Open Public Records Act ("OPRA") requests.³ The Complainant requests the records relevant to this complaint listed above on official OPRA request forms.

November 27, 2006

Memorandum from Municipal Clerk to Police Director and Police Chief. The Clerk encloses the Complainant's OPRA requests and asks the Police Department to respond to the Complainant's requests and forward said response to the Clerk's office.

November 28, 2006

Memorandum from Police Director to Police Chief. The Police Director attaches the Complainant's OPRA requests and asks that the Police Chief respond to said requests.

¹ No legal representation listed on record.

² Represented by Marvin T. Braker, Esq. (Irvington, NJ).

³ The Complainant submitted three (3) separate OPRA requests dated November 27, 2006.

The Police Director states that some of the information may be located in the Internal Affairs Office. The Police Director also states that OPRA requests are time sensitive and that these requests require the Chief's immediate attention. Additionally, the Police Director asks that the Chief copy the Director's office with the Chief's response to the Complainant's requests.

January 5, 2007

Memorandum from Municipal Clerk to Police Director, Police Chief and Township Attorney. The Clerk states that the Complainant contacted the Clerk's office regarding the Complainant's OPRA requests. The Clerk states that the Complainant indicated that he has not yet received the requested records. The Clerk asks that the requested records be released to the Complainant immediately. The Clerk also asks that the Police Director, Police Chief or Township Attorney forward a letter to the Clerk's office indicating that the records were released to the Complainant.

January 10, 2007

Memorandum from Police Director to Police Chief. The Police Director attaches the Municipal Clerk's memorandum dated January 5, 2007 regarding the Complainant's OPRA requests dated November 27, 2006. The Police Director asks that the Police Chief respond to said requests. The Police Director states that some of the information may be located in the Internal Affairs Office. The Police Director also states that OPRA requests are time sensitive and that these requests require the Chief's immediate attention. Additionally, the Police Director asks that the Chief copy the Director's office with the Chief's response to the Complainant's requests.

January 16, 2007

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

- Complainant's OPRA requests dated November 27, 2006
- Memorandum dated January 5, 2007 from Municipal Clerk to Police Director, Police Chief and Township Attorney

The Complainant states that he filed three (3) OPRA requests with the Police Department through the Municipal Clerk on November 27, 2006. The Complainant states that on January 5, 2007, he spoke to the Municipal Clerk regarding his OPRA requests and the Clerk advised the Complainant he would make an inquiry to the Police Department about the OPRA requests. The Complainant states that he received the Clerk's inquiry letter addressed to the Police Chief. The Complainant also states that to date, he has not received the requested records.

February 7, 2007

Letter from Complainant to Municipal Clerk. The Complainant states that he submitted several OPRA requests on November 27, 2006 and to date has not received any response. The Complainant asks that the Clerk follow up on the progress of the Complainant's OPRA requests.

February 7, 2007

Memorandum from Municipal Clerk to Police Director and Police Chief. The Clerk attaches the Complainant's letter dated February 7, 2007 seeking information regarding his OPRA requests dated November 27, 2006. The Clerk asks that the Police Department follow up on this matter and copy the Clerk's office with any responses to the Complainant.

February 8, 2007

Offer of Mediation sent to both parties.

February 9, 2007

Memorandum from Police Director to Police Chief. The Police Director attaches the Municipal Clerk's memorandum dated February 7, 2007. The Police Director asks that the Police Chief advise the Complainant whether the requested records can be provided.

February 14, 2007

Complainant's signed Agreement to Mediate.

February 15, 2007

Municipal Clerk's signed Agreement to Mediate.

March 28, 2007

Letter from Complainant to Municipal Clerk. The Complainant states that he received a copy of the Unit Status History Display for November 27, 2001 in response to his OPRA request. The Complainant asserts that this is not what he requested because it does not depict times, locations, actions, or activity. The Complainant contends that the records he requested can be obtained by pulling up each individual activity that is listed on the Unit Status History Display.

June 14, 2007

Letter from Complainant to GRC. The Complainant states that he does not want to continue with mediation.

June 14, 2007

Letter from the Complainant to GRC. The Complainant states that he has not received any of the requested records, which were part of a criminal investigation. The Complainant asserts that the criminal investigation was about himself, was concluded on or about November 2002 and that the requested records were public records prior to becoming part of a criminal investigation.

June 18, 2007

Request for the Statement of Information sent to the Municipal Clerk.

June 19, 2007

Letter from Municipal Clerk to GRC. The Clerk asserts that the Police Chief is the Custodian of public safety records under the jurisdiction of the Police Department. The Clerk states that this was recommended by the Essex County Prosecutor's Office in

2002 and was subsequently approved as a general procedure by the NJ Division of Local Government Services.

June 20, 2007

Letter from Municipal Clerk to Township Attorney. The Municipal Clerk states that he is in the process of compiling information in response to the GRC's request for a Statement of Information, which the Clerk asserts is cumbersome and time consuming. The Clerk contends that the Statement of Information needs to be reviewed by the Police Department and the Law Office. The Clerk also states that he is requesting a five (5) business day extension from the GRC to complete the requested Statement of Information.

June 29, 2007

Municipal Clerk's Statement of Information ("SOI") with the following attachments:⁴

- Unit Status History Display dated November 27, 2001
- Complainant's OPRA requests dated November 27, 2006
- Memorandum from Municipal Clerk to Police Director and Police Chief dated November 27, 2006
- Memorandum from Police Director to Police Chief dated November 28, 2006
- Memorandum from Municipal Clerk to Police Director, Police Chief and Township Attorney dated January 5, 2007
- Memorandum from Police Director to Police Chief dated January 10, 2007
- Letter from Complainant to Municipal Clerk dated February 7, 2007
- Memorandum from Police Director to Police Chief dated February 9, 2007
- Letter from Municipal Clerk to GRC dated June 19, 2007
- Letter from Municipal Clerk to Township Attorney dated June 20, 2007

The Municipal Clerk certifies that he received the Complainant's OPRA requests on November 27, 2006. The Clerk certifies that on November 27, 2006, he forwarded the Complainant's OPRA requests to the Police Chief, Police Director and Township Attorney. The Clerk states that the Police Director also forwarded the Complainant's OPRA requests to the Police Chief on November 28, 2006. The Clerk certifies that the Complainant came into the Clerk's office on January 5, 2007 to inquire as to the status of his OPRA requests. The Clerk certifies that he forwarded the Complainant's OPRA requests to the Police Chief, Police Director and Township Attorney again on January 5, 2007. The Clerk also states that the Police Director forwarded the Clerk's letter dated January 5, 2007 to the Police Chief on January 10, 2007.

Additionally, the Clerk certifies that he received a letter from the Complainant dated February 7, 2007 in which the Complainant indicated that he had not yet been provided the requested records. The Clerk certifies that he forwarded the Complainant's letter to the Police Director, Police Chief and Township Attorney on February 7, 2007. The Clerk states that the Police Director forwarded the same letter to the Police Chief on February 9, 2007.

⁴ The Clerk also submitted additional correspondence that is not relevant to the adjudication of this complaint.

The Clerk discusses events which took place during the mediation process which are not relevant to the adjudication of this complaint.

The Clerk certifies that he is not aware of all the records responsive to the Complainant's OPRA requests. The Clerk certifies that this information may be in the possession of the Police Department. The Clerk also states that the Unit Status History Report Display for November 27, 2001 was provided to the Complainant on March 28, 2007 by the Police Department via the Law Office. The Clerk certifies that said record was not furnished to his office and that he received the record from the Complainant with the Complainant's letter dated March 28, 2007.

July 9, 2007

Request for SOI sent to Police Chief and Township Attorney.

July 16, 2007

Police Chief's response to the Complainant's OPRA request. The Police Chief responds in writing to the Complainant's OPRA request eight (8) months following receipt of such request. The Police Chief requests that the Complainant contact him to make an appointment to review the requested recording. The Police Chief states that a copy of said recording will also be mailed to the Complainant within a week. Additionally, the Police Chief states that the requested Emergency Medical Log cannot be located.

July 16, 2007

Police Chief's SOI with the following attachments:⁵

- Unit Status History Display dated November 27, 2001
- Complainant's OPRA requests dated November 27, 2006
- Records responsive to the Complainant's second OPRA request dated November 27, 2006 (with redactions)⁶
- Letter from Police Chief to Complainant dated July 16, 2007

The Police Chief certifies that he consulted with the Internal Affairs Department regarding the Complainant's request for radio and telephone conversations and the Department advised him that it does maintain the requested record. The Police Chief certifies that said recording will be made available to the Complainant. The Police Chief includes a letter to the Complainant dated July 16, 2007 requesting that the Complainant make an appointment to review the requested recording and indicating that a copy of said recording will be mailed to the Complainant within a week.

Regarding the Complainant's request for computer printouts of Unit 105's activity on November 27, 2001, the Police Chief certifies that said reports were released to the Complainant on March 28, 2007 with the exception of RB 01-52584 which the Police Chief certifies was inadvertently not included. The Police Chief certifies that he has

⁵ The Chief also submitted additional correspondence that is not relevant to the adjudication of this complaint.

⁶ The Police Chief did not provide a general nature description or the legal explanation for the redactions. *Diomedes Valenzuela v. Township of Irvington, 2007-54 – Findings and Recommendations of the Executive Director*

obtained an additional formatted report which includes the location and action for the requested RB numbers. The Police Chief certifies that personal identifiers have been redacted from these reports. The Police Chief includes said reports with his SOI.

Additionally, the Police Chief certifies that the Police Department has reviewed its files and is unable to locate the requested Emergency Medical Log sheet.

August 6, 2007

Letter from GRC to Police Chief. The GRC requests that the Police Chief provide a general nature description and a legal citation for each redacted portion of the requested records.

August 20, 2007

Letter from GRC to Municipal Clerk. The GRC requests that the Municipal Clerk provide a general nature description and a legal citation for each redacted portion of the requested records.

August 20, 2007

Letter from Municipal Clerk to GRC. The Municipal Clerk states that he has reviewed his files and he cannot locate the Police Chief’s SOI dated July 16, 2007. The Municipal Clerk states that by copy of this letter he is requesting that the Police Chief forward a copy of the Chief’s SOI to the Clerk’s office. Additionally, the Clerk states that it is highly unlikely that he would be able to provide the GRC with the requested certification regarding the redactions to the requested records because the Clerk’s office was not privy to the decision making processes relative to said redactions.

September 11, 2007

Letter from Assistant Township Attorney to GRC. Counsel provides the redaction index as was requested of the Police Chief by the GRC. Counsel’s redaction index is detailed below:

Name of Documents Provided to Complainant, in Whole or in Part and the Date(s) Provided	Provide General Nature Description of the Redacted portions, if Any	Legal Explanation and Citation for Each Redaction
Call # 01-52566 provided August 22, 2007	Included name of driver; redacted address; date of incident: November 27, 2001	Improperly redacted; corrected to show proper redaction; name is a public record, address of victim is not (this incident was a hit and run)
Call # 01-052576 provided August 22, 2007	Redacted address of caller; included name; redacted phone number; date of incident: November 27, 2001	Name is a public record, however, since victim of violence, omitted address and phone number
Call # 01-52579 provided August 22, 2007	Missing person report – juvenile female; date of	No information is released on a juvenile file

	incident: November 27, 2001	
Call # 01-52584 provided August 22, 2007	Included name, redacted address; redacted remaining name, address and accusation number; date of incident: November 27, 2001	Redacted remaining name, address and accusation number because person believed to be a minor (erred on the side of caution); No information is released on a juvenile file
Call # 01-052620 provided August 22, 2007	No redaction necessary – Mr. Lewis is an adult; may only have been witness; date of incident: November 27, 2001	No redaction necessary
Call # 01-052619 provided August 22, 2007	No redaction necessary – Ms. Riddick is an adult; may only have been witness; date of incident: November 27, 2001	No redaction necessary

October 16, 2007

Letter from Complainant to GRC. The Complainant states that on October 11, 2007 he listened to the requested radio and telephone recordings of November 27, 2001 at the Internal Affairs Office. The Complainant also states that he has not yet received a copy of said recordings as requested, and as indicated by the Police Chief in a previous letter to the Complainant and GRC.⁷

October 19, 2007

Letter from Detective Roman Melenka to GRC. Detective Melenka certifies that he is assigned to the Internal Affairs Bureau and is responsible for the departmental recording device. Detective Melenka certifies that the Complainant inspected the requested recording on October 11, 2007. Detective Melenka also certifies that on said date, he was unaware that the Complainant was to receive a copy of the requested recording in addition to inspecting such recordings. Detective Melenka certifies that following an investigation into the matter, he obtained a letter from the Chief of Police to the Complainant dated July 16, 2007 in which the Chief states that the Complainant shall receive a copy of the requested recording.

Further, Detective Melenka certifies that on October 18, 2007 he telephoned the Complainant and advised him that a copy of the requested recording was in the mail. Additionally, Detective Melenka certifies that the recording was sent via certified mail # 7001 0320 0005 5685 2015.

November 3, 2007

Letter from Complainant to GRC. The Complainant states that to date, he has not received a copy of the requested recording. The Complainant states that he has enclosed

⁷ In a letter to the GRC dated July 16, 2007, the Police Chief stated that a copy of the requested recording will be mailed to the Complainant within a week of said letter.

a printout from the United States Postal Service's website which indicates that the certified mail number provided by Detective Melenka does not exist.

November 8, 2007

Letter from Detective Melenka to GRC. Detective Melenka certifies that he received certified mail # 7001 0320 0005 5685 2015 unclaimed by the Complainant on October 30, 2007. Detective Melenka certifies that he is resending the requested recording via certified mail # 7001 0320 0005 5685 2435.

November 21, 2007

Letter from Complainant to GRC. The Complainant states that he made an inquiry via the United State Postal Service's ("USPS") website to track certified mail # 7001 0320 0005 5685 2015 for which Detective Melenka certified that he had mailed to the Complainant on October 19, 2007. The Complainant states that such inquiry revealed that "there is no record for this item."⁸ The Complainant also states that on November 16, 2006, after Detective Melenka certified that the certified mail in question was returned unclaimed by the Complainant, the Complainant spoke to Ms. Wilkins of the Irvington Branch of the US Post Office regarding this matter. The Complainant states that Ms. Wilkins informed him that there is no record of the tracking number certified by Detective Melenka. Additionally, the Complainant states that Ms. Wilkins advised him that the piece of mail in question could not have been returned unclaimed because no record of the item going through any post office exists; therefore an attempt to deliver could not have been made. The Complainant further states that he contacted the US Postal Inspector's Office, which also confirmed that there is no record of certified mail # 7001 0320 0005 5685 2015. The Complainant states that the US Postal Inspector's Office is currently conducting an investigation into this matter.

November 23, 2007

Letter from Complainant to GRC. The Complainant states that he received a CD from the Internal Affairs Unit on November 9, 2007 via US Mail with no accompanying cover letter. The Complainant asserts that the recording was not copied in original form. The Complainant contends that the recordings are not in chronological order, do not depict the date and time the recordings occurred or the exact length of each recording. The Complainant also asserts that not all of the requested recordings are on the CD.

December 12, 2007⁹

Office of Administrative Law ("OAL") Initial Decision Settlement. At a hearing on December 11, 2007 at the OAL regarding Valenzuela v. Township of Irvington, GRC Complaint No. 2006-182, settlement discussions were held and a settlement was reached. In said settlement, the Complainant agreed to withdraw this complaint.

Analysis

⁸ It should be noted that GRC staff conducted the same inquiry via the USPS website and received the same response as stated by the Complainant.

⁹ Additional correspondence was submitted by the parties; however, said correspondence is not relevant to the adjudication of this complaint.

Because a settlement was reached at OAL regarding this complaint, no legal analysis is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council accept the settlement as reached by the parties at the Office of Administrative Law.

Prepared By:

Dara Lownie
Senior Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

January 23, 2008