



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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FINAL DECISION

May 30, 2007 Government Records Council Meeting

Tivon Neals
Complainant

Complaint No. 2007-94

v.

Burlington City Police Department
Custodian of Record

At the May 30, 2007 public meeting, the Government Records Council (“Council”) considered the May 23, 2007 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 as the Custodian legally certifies to forwarding the Complainant’s OPRA request to the custodian of the records responsive, as required by N.J.S.A. 47:1A-5.h., and also legally certifies that at the time of the request the Custodian did not have any records responsive to the Complainant’s OPRA request, the Custodian has not unlawfully denied the Complainant access to the requested records.

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 May, 2007



Vincent P. Maltese, 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: June 4, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 30, 2007 Council Meeting**

**Tivon Neals¹
Complainant**

GRC Complaint No. 2007-94

v.

**Burlington City Police Department²
Custodian of Records**

Records Relevant to Complaint:

- 1) The transcript from the audio-taped statement of Mr. Anthony Tucker on August 5, 2003,
- 2) All warrants, including Search and Arrest Warrants, signed by Judge Thomas S. Smith, Jr. on August 7, 2003, sought by Detective Alan Snow, and the attached affidavits of probable cause for each arrest,
- 3) Detective Alan Snow's official and unofficial investigative reports, supplemental reports and his notes concerning the death of Anthony McNair.

Request Made: On or about January 24, 2007.

Response Made: January 30, 2007.

Custodian: Cindy A. Crivaro

GRC Complaint Filed: March 25, 2007.

Background

January 24, 2007³

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

¹ No attorney is listed in the file.

² Represented by Richard A. Haws of Cureton Caplan, P.C. (Mt. Laurel, NJ).

³ Complainant mailed his OPRA request on or about January 19, 2007. The Custodian did not date-stamp the request upon receipt. Where the record does not conclusively establish the date of receipt of a letter, the Courts frequently rely upon Fed. R. Civ. P. 6(e), which provides that "whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the paper or notice is served upon the party by mail, 3 days shall be added to the prescribed period." See Venner v. Burlington County Bd. of Soc. Servs., 2006 U.S. Dist. LEXIS 59883 (D.N.J. 2006)

January 30, 2007

Custodian's response to the OPRA request. The Custodian responded to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The Custodian states that the Complainant's OPRA request is being forwarded to the Burlington County Prosecutor's Office as they are the office that maintains the records responsive to this OPRA request.

March 25, 2007

Denial of Access Complaint filed with the Government Records Council ("GRC") with the Complainant's OPRA records request dated January 19, 2007 attached.⁴

April 11, 2007

Offer of Mediation sent to both parties.

April 13, 2007

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

May 3, 2007

Request for the Statement of Information sent to the Custodian.

May 10, 2007

Custodian's Statement of Information ("SOI") with the following attachments:⁵

- Complainant's OPRA records request dated January 19, 2007, and
- Letter from the Custodian to the Prosecutor's Office, copied to the Complainant, dated January 30, 2007.

The Custodian asserts that the Complainant's OPRA request was received on or about January 19, 2007. The Custodian further asserts that the Complainant's OPRA request was correctly forwarded to the Burlington City Prosecutor. The Custodian certifies that at the time of the request, the Custodian did not have any records responsive to the Complainant's OPRA request.

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:

⁴ The Complaint submitted additional information not relevant to the adjudication of this complaint.

⁵ The Custodian submitted additional information not relevant to the adjudication of this complaint. Tivon Neals v. Burlington City Police Department, 2007-94 – Findings and Recommendations of the Executive Director

“... 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:

“Any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.” N.J.S.A. 47:1A-5.h.

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 that he submitted an OPRA request to the Custodian on or about January 19, 2007.

The Custodian asserts that the Complainant’s OPRA request was received on or about January 19, 2007. The Custodian further asserts that the Complainant’s OPRA request was correctly forwarded to the Burlington City Prosecutor. The Custodian certifies that at the time of the request, the Custodian did not have any records responsive to the Complainant’s OPRA request.

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.

As the Custodian legally certifies to forwarding the Complainant’s OPRA request to the custodian of the records responsive, as required by N.J.S.A. 47:1A-5.h., and also legally certifies that at the time of the request the Custodian did not have any records responsive to the Complainant’s OPRA request, the Custodian has not unlawfully denied the Complainant access to the requested records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that as the Custodian legally certifies to forwarding the Complainant’s OPRA request to the custodian of the records responsive, as required by N.J.S.A. 47:1A-5.h., and also legally certifies that at the time of the request the Custodian did not have any records responsive

to the Complainant's OPRA request, the Custodian has not unlawfully denied the Complainant access to the requested records.

Prepared By:

Rebecca A. DeVoe
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

May 23, 2007