



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

July 23, 2013 Government Records Council Meeting

Robert A. Verry
Complainant

Complaint No. 2009-237

v.

Borough of South Bound Brook (Somerset)
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council (“Council”) considered the July 16, 2013 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 this complaint be dismissed because the Complainant (via Counsel) withdrew his complaint in a letter to the Honorable John Schuster, Administrative Law Judge, dated June 10, 2013, because the parties have agreed to settle the matter. Therefore, no further adjudication is required.

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 23rd Day of July, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 23, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 23, 2013 Council Meeting**

Robert A. Verry¹
Complainant

GRC Complaint No. 2009-237

v.

Borough of South Bound Brook (Somerset)²
Custodian of Records

Records Relevant to Complaint:

March 12, 2009 OPRA request:

On-site inspection of invoices submitted by the law firm of Francesco Taddeo, LLC, for January and February 2009.

May 1, 2009 OPRA request:

Copies of invoices submitted by the law firm of Francesco Taddeo, LLC, for March and April 2009.³

Request Made: March 12, 2009, May 1, 2009

Response Made: Unknown

GRC Complaint Filed: August 6, 2009⁴

Background

January 31, 2012 Council Meeting:

At its January 31, 2012 public meeting, the Council considered the January 24, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. Because the Custodian provided unredacted copies of the two (2) invoices to the Complainant as required by the Council's Interim Order, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the five (5) business days required by the Council's

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Donald E. Kazar, Custodian of Records. Represented by Francesco Taddeo, Esq. (Somerville, NJ).

³ The Complainant requested additional records that are not at issue in this complaint.

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

Interim Order, the Custodian has complied with the Council's November 29, 2011 Interim Order.

2. The Custodian complied with Council's January 25, 2011 and November 29, 2011 Interim Orders. Moreover, the Council determined that some of the redactions made to the invoices dated February 27, 2011 and March 31, 2011, as well as all redactions made to the invoice dated May 6, 2009, were lawful. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA (failing to respond in writing within the statutorily mandated time frame, failing to respond properly providing a specific lawful basis for redactions on the responsive invoices and unlawful denial of access to redacted entries in the invoices dated February 27, 2009 and March 31, 2009) had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's November 29, 2011 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian provided to the Complainant unredacted copies of the invoices dated February 27, 2009 and March 31, 2009 pursuant to the Council's Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277 (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

Procedural History:

On February 3, 2012, the Council distributed its Interim Order to all parties. On April 20, 2012, this complaint was transmitted to the Office of Administrative Law ("OAL"). On June 10, 2013, the Complainant's Counsel sent a letter to the Honorable John Schuster, Administrative Law Judge ("ALJ"), withdrawing this complaint because the parties agreed to the matter.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant (via Counsel) withdrew his complaint in a letter to the Honorable John Schuster, Administrative Law Judge, dated June 10, 2013, because the parties have agreed to settle the matter. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

July 16, 2013