



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

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

LORI GRIFA  
*Commissioner*

**FINAL DECISION**

**February 24, 2011 Government Records Council Meeting**

Orie J. McMillan  
Complainant

Complaint No. 2009-77

v.

City of Newark Housing Authority (Essex)  
Custodian of Record

At the February 24, 2011 public meeting, the Government Records Council (“Council”) considered the February 15, 2011 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 because the Custodian certified that he did not receive any OPRA request from the Complainant dated December 29, 2008, and because the Complainant has not provided any credible evidence to contradict said certifications, the Custodian did not unlawfully deny access to the Complainant’s OPRA request. *See Ping v. Borough of Brielle (Monmouth), GRC Complaint No. 2009-132 (April 2010).*

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 24<sup>th</sup> Day of February, 2011

Robin Berg Tabakin, Chair  
Government Records Council



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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: March 1, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 24, 2011 Council Meeting**

**Orie J. McMillan<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2009-77**

v.

**City of Newark Housing Authority (Essex)<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** Copies of meeting minutes taken during all tenants' participation meetings for the time period beginning of 2007 until December 16, 2008.

**Request Made:** December 29, 2008

**Response Made:** None

**Custodian:** Arthur Martin

**GRC Complaint Filed:** March 4, 2009<sup>3</sup>

**Background**

**December 29, 2008**

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.

**March 4, 2009**

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's OPRA request dated December 29, 2008.

The Complainant states that she submitted an OPRA request to the City of Newark Housing Authority ("NHA") on December 29, 2008. The Complainant states that she received no response from the NHA.

The Complainant agrees to mediate this complaint.<sup>4</sup>

**March 10, 2010**

Request for the Statement of Information ("SOI") sent to the Custodian.

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Ellen M. Harris, Esq. (Newark, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> The GRC notes that it sent mediation materials to a different agency that declined to mediate this complaint. The GRC did not send mediation materials to the NHA prior to sending a Statement of Information request.

**April 8, 2010**

Custodian's SOI with no attachments.

The Custodian certifies that he never received the Complainant's OPRA request. The Custodian also certifies that the Complainant's OPRA request was dated December 29, 2008; however, such request was apparently actually submitted to the NHA on March 4, 2009 based on the date on the fax machine imprint.<sup>5</sup>

The Custodian states that based on the foregoing, the Custodian can be of no further assistance in this matter. The Custodian states that if the Complainant wishes to renew her OPRA request, the NHA will fulfill the Complainant's OPRA request.

**June 15, 2010**

E-mail from the GRC to the Complainant. The GRC states that in a recent telephone conversation, the Complainant advised the GRC that the NHA provided the Complainant with records relevant to this complaint in response to a separate OPRA request not relevant to this complaint. Further, the GRC states that the Complainant also advised that she wished to review the records and then inform the GRC as to whether the Complainant was provided with all records sought in connection with this complaint. Lastly, the GRC requests that the Complainant confirm that the foregoing is correct.

**July 26, 2010**

Letter from the Complainant to Ms. Joyce A. Morgan ("Ms. Morgan"), Tenant Affairs. The Complainant requests that Ms. Morgan forward to the GRC the records provided to the Complainant in response to the separate OPRA request.<sup>6</sup>

**September 20, 2010**

E-mail from the GRC to the Custodian. The GRC states that it has reviewed the evidence of record in the instant complaint and needs additional information. The GRC requests that the Custodian legally certify to the following:

1. Whether the Custodian received the Complainant's OPRA request prior to the filing of the instant complaint?
2. Whether the records referred to in the Complainant's July 26, 2010 letter was provided to the Complainant as part of a request not relevant to this complaint?

The GRC requests that the Custodian provide the requested legal certification and any additional documentation to the GRC by close of business on September 24, 2010. The GRC states that it may be beneficial to obtain a legal certification regarding Item No. 2 above from Ms. Morgan.

---

<sup>5</sup> The Custodian asserts that it appears based on the fax machine imprint that the Complainant may have mistakenly submitted her OPRA request to the City of Newark. However, it appears as though the fax machine imprint memorializes the Complainant's filing of the Denial of Access Complaint, which was received by the GRC on March 4, 2009, or the same day annotated in the fax machine imprint.

<sup>6</sup> The GRC did not receive a response from the NHA.

**September 23, 2010**

E-mail from the Custodian to the GRC. The Custodian requests an extension of time until October 1, 2010 to submit the requested legal certification.

**September 23, 2010**

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until October 1, 2009 to submit the requested legal certification.

**October 12, 2010**

E-mail from the Custodian to the GRC. The Custodian states that the requested legal certification is being forwarded to the GRC via Fed Ex and should be delivered on October 13, 2010.

**October 13, 2010**

Custodian's legal certification with the following attachments:

- Letter from Ms. Morgan to the Complainant dated November 13, 2009 attaching:
  - Tally of voters that voted for the Executive Board dated June 21, 2007.
  - Funding Agreement between the NHA and Stephen Crane Tenant Association dated July 26, 2007.
  - Stephen Crane Tenant Association meeting minutes dated June 11, 2009.
  - Stephen Crane Tenant Association meeting minutes dated November 20, 2009.
  - Stephen Crane Tenant Association meeting minutes dated February 22, 2010.
  - Stephen Crane Tenant Association meeting minutes dated May 28, 2010.
  - 2009-2010 Budget for Stephen Crane Tenant Association.
- Custodian's SOI dated April 8, 2010.

The Custodian's Counsel certifies that she has attached the Custodian's SOI in response to the GRC's first question. Counsel certifies that the NHA never received the Complainant's OPRA request which is the subject of this complaint.

Counsel further certifies that the NHA received an OPRA request from the Complainant on August 19, 2009 and that Ms. Morgan responded to said request although she was not authorized to do so. Counsel certifies that based on this lapse in procedure, the NHA is unable to produce a copy of the Complainant's August 19, 2009 OPRA request. Counsel certifies that Ms. Morgan's response letter to the Complainant is dated November 13, 2009; however, the requested records were actually provided to the Complainant on January 6, 2010.

The Custodian again certifies that he never received the Complainant's OPRA request which is at issue in this complaint. The Custodian reiterates that the Complainant's OPRA request was dated December 29, 2008; however, such request was apparently submitted to the NHA on March 4, 2009 based on the date on the fax machine imprint.

## Analysis

### **Whether the Custodian unlawfully denied access to the Complainant's December 29, 2008 OPRA request?**

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 states that:

"[a] request for access to a government record shall be *in writing* and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian..." (Emphasis added.) N.J.S.A. 47:1A-5.g.

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.

The Complainant filed a Denial of Access Complaint against the NHA after she did not receive a response to her OPRA request. The Custodian certified in the SOI that he never received the Complainant's OPRA request. The Custodian further certified that although the OPRA request was dated December 29, 2008, such request was apparently not submitted to the NHA until March 4, 2009 based on the date on the fax machine imprint. The Custodian subsequently certified to this again on October 13, 2010.

In Ping v. Borough of Brielle (Monmouth), GRC Complaint No. 2009-132 (April 2010), the complainant filed a Denial of Access Complaint stating that he submitted four

(4) OPRA requests for a site plan to no avail. In a letter to the GRC, the custodian stated that the Borough had no record of the four (4) OPRA requests. The GRC subsequently requested that the custodian certify to whether he received the four (4) requests at issue. The custodian legally certified on May 5, 2009 that none of the requests at issue were filed with his office, nor was the custodian aware that the requests were received by any other employees of the Borough. The custodian noted that the original zoning officer and current zoning officer may have received the alleged requests if such were addressed to the Zoning Office.

The GRC subsequently obtained legal certifications from the original and current zoning officers certifying that neither had received the four (4) requests in question. Based on the foregoing, the Council determined that:

“... because the Custodian, original Zoning Officer and current Zoning Officer all certified that they did not receive any OPRA requests from the Complainant dated July 8, 2008 and April 6, 2009, and because the Complainant has not provided any evidence to contradict said certifications, the Custodian did not unlawfully deny access to the Complainant’s requests dated July 8, 2008 and April 6, 2009.” *Id.* at pg. 9.<sup>7</sup>

In the matter currently before the Council, the Complainant filed a Denial of Access Complaint after she did not receive a response from the NHA to her OPRA request. Similar to the facts in Ping, the Custodian herein certified that he never received the request. The Complainant did not provide any credible evidence to contradict the Custodian’s certification.

To the contrary, the evidence of record indicates that the Custodian only became aware of the Complainant’s OPRA request after being served with the Denial of Access Complaint in this matter by the GRC. This fact is established by the Custodian’s certification that the Complainant’s OPRA request was dated December 29, 2008 but was apparently not submitted until March 4, 2009.<sup>8</sup>

Therefore, because the Custodian certified that he did not receive any OPRA request from the Complainant dated December 29, 2008, and because the Complainant has not provided any credible evidence to contradict said certifications, the Custodian did not unlawfully deny access to the Complainant’s OPRA request. *See Ping, supra.*

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Custodian certified that he did not receive any OPRA request from the Complainant dated December 29, 2008, and because the Complainant has not provided any credible

---

<sup>7</sup> The other two (2) requests were deemed to be invalid because the complainant failed to submit them on the Borough’s official OPRA request form. The GRC notes that the form is no longer required to be submitted pursuant to Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009).

<sup>8</sup> The GRC notes that the Complainant filed the instant Denial of Access Complaint on March 4, 2009. *Orie J. McMillan v. City of Newark Housing Authority (Essex)*, 2009-77 – Findings and Recommendations of the Executive Director

evidence to contradict said certifications, the Custodian did not unlawfully deny access to the Complainant's OPRA request. *See* Ping v. Borough of Brielle (Monmouth), GRC Complaint No. 2009-132 (April 2010).

Prepared By: Frank F. Caruso  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

February 15, 2011