



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

October 25, 2011 Government Records Council Meeting

Tracy L. Wadhams
Complainant

Complaint No. 2010-209

v.

Town of Belvidere (Warren)
Custodian of Record

At the October 25, 2011 public meeting, the Government Records Council (“Council”) considered the October 18, 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 both the Custodian and Tax Collector certified that the Town provided access to the requested certificate on August 2, 2010 via e-mail, the Custodian did not unlawfully deny access to the requested certificate. Moreover, there is no competent, credible evidence in the record to refute the Custodian’s and Tax Collector’s respective certifications. See Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005)(holding that the Custodian did not unlawfully deny access to Complainant’s OPRA request because the Custodian provided all records that existed).

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 25th Day of October, 2011

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: October 28, 2011



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 25, 2011 Council Meeting**

**Tracy L. Wadhams¹
Complainant**

GRC Complaint No. 2010-209

v.

**Town of Belvidere (Warren)²
Custodian of Records**

Records Relevant to Complaint: Copy of a tax lien certification for 223 Water Street, Belvidere (Block No. 5, Lot No. 21).

Request Made: July 23, 2010

Response Made: July 26, 2010

Custodian: Teresa A. DeMont

GRC Complaint Filed: August 11, 2010³

Background

July 23, 2010

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 via e-mail. The Complainant states that her preferred method of delivery is via e-mail.⁴

July 26, 2010

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the same day as receipt of such request.⁵ The Custodian states that she did not receive the Complainant's OPRA request until late afternoon.

The Custodian states that she must obtain the requested certificate from Ms. Susan Luthringer, Tax Collector ("Tax Collector"), who only comes to the Town of Belvidere ("Town") once a week. The Custodian states that the Tax Collector has already left for the week. The Custodian states that she will obtain the requested certificate from the Tax Collector on August 2, 2010 and e-mail it to the Complainant. The Custodian states that if the Complainant needs the certificate prior to August 2, 2010, the Custodian will attempt to obtain the certificate by other means.

¹ No legal representation listed on record.

² Represented by Dominick Santini, Esq. (Columbia, NJ).

³ The GRC received the Denial of Access Complaint on said date.

⁴ The Complainant submitted her request to the Custodian on a Friday.

⁵ The Custodian certified in the SOI that she received the Complainant's OPRA request on July 26, 2010.

August 2, 2010

E-mail from the Tax Collector to the Complainant attaching Certificate of Sale for Unpaid Municipal Liens No. 2008-01 dated July 14, 2008 (2 pages). The Tax Collector states that she hopes the attached scanned .pdfs transmitted properly. The Tax Collector requests that the Complainant advise if there is any issue opening the attached files; if so, the Town will send the requested certificate to the Complainant via U.S. mail.⁶

August 6, 2010

E-mail from the Complainant to the Custodian. The Complainant states that the Custodian's response to the Complainant's OPRA request is past due as of August 3, 2010. The Complainant requests that the Custodian advise as to the status of said OPRA request.

August 11, 2010

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

- Complainant's OPRA request dated July 23, 2010.
- E-mail from the Custodian to the Complainant dated July 26, 2010.
- E-mail from the Complainant to the Custodian dated August 6, 2010.

The Complainant states that she submitted an OPRA request to the Town via e-mail on July 23, 2010. The Complainant states that the Custodian responded via e-mail on July 26, 2010 acknowledging receipt of said request and advising that she would provide the requested certificate on August 2, 2010. The Complainant states that she sent an e-mail to the Custodian on August 6, 2010 advising that the Custodian's response was overdue and asking for the status of said OPRA request. The Complainant states that she received no response and no records.

The Complainant agrees to mediate this complaint.

August 30, 2010

Offer of Mediation sent to the Custodian.

September 7, 2010

E-mail from the GRC to the Custodian. The GRC states that pursuant to an earlier conversation, the GRC grants the Custodian an extension of time until September 14, 2010 to respond to the Offer of Mediation.

September 8, 2010

E-mail from the Custodian to the Complainant attaching a Certificate of Sale for Unpaid Municipal Liens No. 2008-01 dated July 14, 2008 (2 pages). The Custodian states that attached is the requested certificate. The Custodian states that she returned from vacation on September 7, 2010 and received an e-mail from the GRC advising of the filing of this complaint. The Custodian states that she was previously unaware that

⁶ The evidence of record indicates that the Tax Collector copied the Custodian on this e-mail. Further review of the e-mail also shows that the Complainant's e-mail address is the same as the e-mail address set forth in the Complainant's Denial of Access Complaint.

the Complainant did not receive the Tax Collector's e-mail dated August 2, 2010 attaching the requested certificate.

September 10, 2010

E-mail from the Complainant to the GRC. The Complainant withdraws her consent to mediation and requests that the GRC begin a full investigation of this complaint.

September 10, 2010

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

September 14, 2010

Complainant's amended Denial of Access Complaint with the following attachments:

- E-mail from the Custodian to the Complainant dated September 8, 2010 (with attachments).
- Certificate of Sale for Unpaid Municipal Liens No. 2008-01 dated July 14, 2008 (2 pages).

The Complainant states that the Custodian sent her a copy of the requested certificate via e-mail on September 8, 2010; however, the Custodian's failure to provide access to same within the statutorily mandated time frame constitutes a "deemed" denial.

September 15, 2010

E-mail from the GRC to the Custodian. The GRC states that pursuant to an earlier telephone conversation, the GRC grants the Custodian an extension of time until September 24, 2010 to submit the requested SOI.

September 21, 2010

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated July 23, 2010.
- E-mail from the Custodian to the Complainant dated July 26, 2010.
- E-mail from the Tax Collector to the Complainant dated August 2, 2010 (with attachments).
- E-mail from the GRC to the Custodian dated September 7, 2010.
- E-mail from the Custodian to the Complainant dated September 8, 2010 (with attachment).

The Custodian certifies that no records responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by the New Jersey Department of State, Division of Archives and Records Management ("DARM").⁷

⁷ The Custodian does not certify to the search undertaken to locate the requested record as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).
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The Custodian certifies that the Complainant submitted an OPRA request to the Town via e-mail on July 23, 2010. The Custodian certifies that she was out of the office until July 26, 2010 and received the Complainant's OPRA request upon her return to the office. The Custodian certifies that she had to obtain the requested certificate from the Tax Collector; however, the Tax Collector is only in the office once a week. The Custodian certifies that the Tax Collector was at the office on July 26, 2010 but left before the Custodian received the Complainant's OPRA request.

The Custodian certifies that she responded in writing to the Complainant's OPRA request on July 26, 2010 stating that the requested certificate would be forwarded to the Complainant on August 2, 2010. The Custodian certifies that she also advised that if the Complainant needed the certificate sooner, the Custodian would attempt to obtain same prior to August 2, 2010. The Custodian certifies that on August 2, 2010, she asked the Tax Collector to e-mail the requested certificate to the Complainant. The Custodian certifies that the Tax Collector sent the requested certificate to the Complainant via e-mail on August 2, 2010 and copied the Custodian.

The Custodian certifies that on August 30, 2010, the GRC sent an e-mail to the Custodian advising of the filing of this complaint. The Custodian certified that because she was on vacation from August 30, 2010 to September 6, 2010, the Custodian did not receive the GRC's e-mail until September 7, 2010. The Custodian certifies that she contacted the GRC via telephone to request an extension of time until September 14, 2010 to respond to the Offer of Mediation, which the GRC granted. The Custodian certifies that until receiving notice of this complaint, the Custodian thought that the Complainant received the requested certificate.

The Custodian certifies that she e-mailed the requested certificate to the Complainant on September 8, 2010 advising that the Custodian was unaware that the Complainant never received same. The Custodian certifies that she received no response from the Complainant. The Custodian states that the Complainant noted in the Denial of Access Complaint that she e-mailed the Custodian on August 6, 2010 requesting the status of her OPRA request. The Custodian certifies that after thoroughly checking her e-mail account, the Custodian was unable to locate this e-mail. The Custodian certifies that receipt of the Complainant's August 6, 2010 e-mail would have been the only way the Custodian would have known the Complainant never received the certificate.

The Custodian certifies that the GRC advised on September 10, 2010 that the Complainant withdrew her consent to mediation of this complaint and wish to proceed to the GRC adjudication process. The Custodian certifies that the GRC forwarded to her the Complainant's amended Denial of Access Complaint on September 14, 2010.

The Custodian contends that based on the foregoing, at no time did she deny the Complainant's OPRA request.

August 26, 2011

E-mail from the GRC to the Custodian. The GRC states that it has reviewed the evidence of record and is in need of additional information. The GRC states that the Custodian certified in the SOI that the Tax Collector sent the Complainant the requested

certificate on August 2, 2010. The GRC states that the Custodian provided a copy of said e-mail as part of the SOI; however, the attached two (2) .pdf files have generic titles that do not indicate whether the files represent the requested certificate. The GRC requests that the Tax Collector certify to the following:

1. Whether the requested certificate was contained within the two (2) .pdf files attached to the August 2, 2010 e-mail to the Complainant? Please indicate whether each file represented one (1) of the two (2) pages that comprised the certificate.
2. Whether the Tax Collector received any return receipts in response to the August 2, 2010 e-mail?
3. Whether the Tax Collector received any failure to deliver receipts in response to the August 2, 2010 e-mail?

The GRC requests that the Tax Collector provide the requested legal certification by close of business on August 29, 2011.

August 29, 2011

Facsimile from the Tax Collector to the GRC⁸ with the following attachments:

- E-mail from the Tax Collector to the Complainant dated August 2, 2010 (with attachments).
- Certificate of Sale for Unpaid Municipal Liens No. 2008-01 dated July 14, 2008 (2 pages).

The Tax Collector states that she sent an e-mail to the Complainant on August 2, 2010 attaching two (2) .pdf files. The Tax Collector states that each file contained one (1) page of the requested two (2) page certificate. The Tax Collector states that the e-mail system at the Town is not set up to accept return receipts. The Tax Collector states that she did not receive a failure to deliver receipt.

September 8, 2011

E-mail from the GRC to the Custodian. The GRC states that it is in receipt of the Tax Collector's legal certification; however, said certification is not valid. The GRC states that in order for a legal certification to be valid, it must contain the following language pursuant to *N.J. Court Rules, 1969 R. 1:4-4* (2005): "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." *Id.*

The GRC requests that the Custodian resubmit the Tax Collector's legal certification to include the foregoing language by close of business on September 12, 2011.

⁸ Although the Tax Collection captioned this submission "Certification," the Tax Collector did not include the necessary language in order for this submission to be considered a valid legal certification pursuant to *N.J. Court Rules, 1969 R. 1:4-4* (2005): "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." Tracy L. Wadhams v. Town of Belvidere (Warren), 2010-209 – Findings and Recommendations of the Executive Director

September 12, 2011

The Tax Collector's amended legal certification with the following attachments:

- E-mail from the Tax Collector to the Complainant dated August 2, 2010 (with attachments).
- Certificate of Sale for Unpaid Municipal Liens No. 2008-01 dated July 14, 2008 (2 pages).

The Tax Collector certifies that she sent an e-mail to the Complainant on August 2, 2010 attaching two (2) .pdf files. The Tax Collector certifies that each file contained one (1) page of the requested two (2) page certificate. The Tax Collector certifies that the e-mail system at the Town is not set up to accept return receipts. The Tax Collector certifies that she did not receive a failure to deliver receipt.

Analysis

Whether the Custodian unlawfully denied access to the requested certificate?

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 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.

In the instant complaint, the Complainant submitted an OPRA request to the Custodian on July 23, 2010. The Complainant filed this complaint arguing that she did not receive a response to her OPRA request or follow-up e-mail dated August 6, 2010.

In the SOI, the Custodian certified that she received the Complainant's OPRA request on July 26, 2010. The Custodian also certified that the Tax Collector notified the Custodian on August 2, 2010 that the responsive certificate was sent to the Complainant via e-mail. Moreover, the Custodian certified that she was unable to locate the Complainant's August 6, 2010 e-mail, which would have been the only way the Custodian would have known the Complainant did not receive the requested certificate. The Tax Collector further certified on September 12, 2011 that she sent the requested certificate to the Complainant via e-mail on August 2, 2010 and did not receive a failure of delivery notice.

Both the Custodian's certified statements in the SOI and the Tax Collector's certification are corroborated by the evidence of record. Specifically, the SOI included an e-mail from the Tax Collector to the Complainant dated August 2, 2010 attaching the requested certificate in two (2) .pdf files and copying the Custodian.

OPRA states that in the adjudication of a denial of access complaint, a custodian must bear the burden of proving that any denial of access is authorized by law. N.J.S.A. 47:1A-6. In this instance, the evidence of record indicates that the Custodian responded in writing to the Complainant on the same day as receipt of the Complainant's OPRA request advising that the requested certificate would be provided on August 2, 2010 and had the Tax Collector respond providing access to the same on August 2, 2010. Additionally, there is no evidence in the record to refute these certifications.

Therefore, because both the Custodian and Tax Collector certified that the Town provided access to the requested certificate on August 2, 2010 via e-mail, the Custodian did not unlawfully deny access to the requested certificate. Moreover, there is no competent, credible evidence in the record to refute the Custodian's and Tax Collector's respective certifications. *See Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005)(holding that the Custodian did not unlawfully deny access to Complainant's OPRA request because the Custodian provided all records that existed.)

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because both the Custodian and Tax Collector certified that the Town provided access to the requested certificate on August 2, 2010 via e-mail, the Custodian did not unlawfully deny access to the requested certificate. Moreover, there is no competent, credible evidence in the record to refute the Custodian's and Tax Collector's respective certifications. *See Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005)(holding that the Custodian did not unlawfully deny access to Complainant's OPRA request because the Custodian provided all records that existed).

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

October 18, 2011