



**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*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**September 24, 2013 Government Records Council Meeting**

Sabino Valdes  
Complainant

Complaint Nos. 2010-217 and 2010-258

v.

Township of Belleville (Essex)  
Custodian of Record

At the September 24, 2013 public meeting, the Government Records Council (“Council”) considered the September 17, 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 it adopts the Administrative Law Judge’s September 3, 2013 Initial Order that the case be dismissed.

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 24th Day of September, 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: September 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 24, 2013 Council Meeting**

**Sabino Valdes<sup>1</sup>  
Complainant**

**GRC Complaint Nos. 2010-217  
and 2010-258**

**v.**

**Township of Belleville,<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaints:**

GRC Complaint No. 2010-217:

1. Copy of the date stamped Notice of Claim and Amendment to the Notice of Claim filed by the Complainant with the Municipal Clerk on July 10, 2010 and July 17, 2010 relevant to Complaint No. 012584.

GRC Complaint No. 2010-258:

2. Copy of the Statement of Information (“SOI”) sent to the Government Records Council (“GRC”) in the matter of Valdes v. Twp. of Belleville (Essex), GRC Complaint No. 2010-217.
3. Copy of the original amendment to the initial notice of claim dated July 12, 2010.

**Custodian of Record:** Kelly A. Cavanagh

**Requests Received by Custodian:** August 5, 2010; September 13, and September 14, 2010

**Responses Made by Custodian:** No response; September 15, and September 22, 2010

**GRC Complaints Received:** August 19, 2010

**Background**

**June 26, 2012 Council Meeting:**

At its June 26, 2012 public meeting, the Council considered the June 19, 2012 Findings and Recommendations of the Executive Director in GRC Complaint No. 2010-217 and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian did not timely respond to the Complainant’s OPRA request. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request

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

<sup>2</sup> Represented by Thomas Murphy, Esq. (Belleville, NJ).

either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The GRC declines to order disclosure of the Notice of Claim relevant to Complaint No. 012584 because the Custodian submitted this record to the Complainant with the Statement of Information.
3. Based on the contested facts in this complaint, the GRC is unable to determine whether Amendment to the Notice of Claim dated July 12, 2010 is the record responsive to the Complainant’s OPRA request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

#### March 27, 2012 Council Meeting:

At its March 27, 2012 public meeting, the Council considered the March 20, 2012 Findings and Recommendations of the Executive Director in Complaint No. 2010-258 and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The GRC does not have authority over the content of records provided to requestors pursuant to OPRA. Kwanzaa v. Dep’t of Corrections, Complaint No. 2004-167 (March 2005). Therefore, the Custodian has not unlawfully denied access to the requested Statement of Information because the Custodian granted access to said record in its entirety.
2. Based on the contested facts in this complaint, the GRC is unable to determine whether or not the Custodian provided the Complainant access to the amendment to the initial notice of claim dated July 12, 2010 in response to the Complainant’s request dated September 14, 2010. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On March 29, 2012, the Council's Interim Order in Complaint 2012-258 ("Order 2012-258") was distributed to the parties. Thereafter, on April 26, 2012, Complaint No. 2012-258 was transmitted to the Office of Administrative Law ("OAL").

On June 27, 2012, the Council's Interim Order in Complaint 2012-217 ("Order 2012-217") was distributed to the parties. Subsequently, on October 26, 2012, Complaint No. 2012-217 was transmitted to OAL.

On September 3, 2013, the Administrative Law Judge issued an order that the case be dismissed (see attached OAL Initial Decision dated September 3, 2013).

**Analysis**

No analysis required.

**Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council adopt the Administrative Law Judge's September 3, 2013 Initial Order that the case be dismissed.

Prepared By: Dawn R. SanFilippo, Esq.  
Senior Counsel

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

September 17, 2013



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**INTERIM ORDER**

**June 26, 2012 Government Records Council Meeting**

Sabino Valdes  
Complainant

Complaint No. 2010-217

v.

Township of Belleville (Essex)  
Custodian of Record

At the June 26, 2012 public meeting, the Government Records Council (“Council”) considered the June 19, 2012 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:

1. The Custodian did not timely respond to the Complainant’s OPRA request. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The GRC declines to order disclosure of the Notice of Claim relevant to Complaint No. 012584 because the Custodian submitted this record to the Complainant with the Statement of Information.
3. Based on the contested facts in this complaint, the GRC is unable to determine whether Amendment to the Notice of Claim dated July 12, 2010 is the record responsive to the Complainant’s OPRA request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of June, 2012



Steven F. Ritardi, Esq., Acting 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: June 27, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 26, 2012 Council Meeting**

**Sabino Valdes<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-217**

v.

**Township of Belleville (Essex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copy of the date stamped Notice of Claim and Amendment to the Notice of Claim filed by the Complainant with the Municipal Clerk on July 10, 2010 and July 17, 2010 relevant to Complaint No. 012584.

**Request Made:** August 2, 2010

**Response Made:** No response

**Custodian:** Kelly A. Cavanagh

**GRC Complaint Filed:** August 19, 2010<sup>3</sup>

**Background**

**August 2, 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.

**August 19, 2010**

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

- Complainant's OPRA request dated August 2, 2010
- U.S. Postal Service Certified Mail Receipt dated August 5, 2010<sup>4</sup>

The Complainant states that he mailed an OPRA request to the Township of Belleville on August 2, 2010 requesting a copy of the records relevant to this complaint listed above. The Complainant also states that he filed the Notice of Claim on July 10, 2010 and the Amendment to the Notice of Claim on July 17, 2010. The Complainant

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

<sup>2</sup> Represented by Thomas Murphy, Esq. (Belleville, NJ)

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

<sup>4</sup> The U.S. Postal Service Certified Mail Receipt indicates that the Township of Belleville date stamped the receipt on August 5, 2010. However, the mail receipt indicates that the OPRA request was delivered on August 3, 2010.



further states that his OPRA request was received by the Custodian on August 2, 2010.<sup>5</sup> The Complainant states that the Custodian failed to respond to his OPRA request.

The Complainant does not agree to mediate this complaint.

**August 31, 2010**

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

**September 8, 2010**

Custodian’s SOI with the following attachments:

- Notice of Claim submitted to the Township of Belleville dated July 7, 2010
- Complainant’s OPRA request dated August 2, 2010

The Custodian certifies that the Complainant has had many dealings with the Township since the beginning of 2010. The Custodian also certifies that she reviewed the files from the Township Attorney’s Office, Construction Code Office and the Municipal Clerk’s office. The Custodian further certifies that Notices of Claims must be retained for three (3) years and then may be destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that she received the Complainant’s OPRA request on August 5, 2010. The Custodian also certifies that she did not respond to the Complainant’s OPRA request. The Custodian states that pursuant to N.J.S.A. 47:1A-5, if the Custodian does not respond to the Complainant’s OPRA request within seven (7) business days after receipt, the failure to respond shall be considered a deemed denial. The Custodian certifies that there is no Notice of Claim filed by the Complainant on July 10, 2010. The Custodian also certifies that the Complainant filed a Notice of Claim on July 7, 2010 that was received by the Municipal Clerk’s Office on July 8, 2010.<sup>6</sup>

**December 19, 2011**

E-mail from the GRC to the Custodian. The GRC states that additional information is necessary for the Council to adjudicate this complaint. The GRC requests that the Custodian provide a legal certification by December 22, 2011 in response to the following questions:

1. Whether there are any records responsive for the Notice of Claim filed by the Complainant on July 10, 2010 relevant to Complaint No. 012584?
2. Whether there are any records responsive for the Amendment to the Notice of Claim filed by the Complainant on July 17, 2010 relevant to Complaint No. 012584?

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<sup>5</sup> The Custodian mailed his OPRA request on August 2, 2010, however the Township did not receive the OPRA request until August 5, 2010.

<sup>6</sup> The Custodian noted on the Notice of Claim that it was received and distributed to the Township Attorney and Township Manager on July 8, 2010.

**December 30, 2011**

E-mail from the GRC to the Custodian. The GRC states that it requested a legal certification from the Custodian on December 19, 2011. The GRC also states that to date it is not in receipt of the Custodian's legal certification. The GRC requests that the Custodian submit the requested legal certification within three (3) business days.

**January 5, 2012**

Letter from the Custodian to the GRC. The Custodian provides the requested legal certification. The Custodian certifies that there are no records responsive to the Complainant's request for a Notice of Claim filed by the Complainant on July 10, 2010 relevant to Complaint No. 012584. The Custodian also certifies that there are no records responsive to the Complainant's request for an Amendment to the Notice of Claim filed by the Complainant on July 17, 2010 relevant to Complaint No. 012584.

**January 9, 2012**

Facsimile from the Complainant to the GRC. The Complainant responds to the Custodian's legal certification dated January 5, 2012. The Complainant states that on July 12, 2010 he sent the Custodian via certified mail an original and a copy of an Amendment to the Notice of Claim. The Complainant also states that according to the certified mail receipt, Mary E. Docherty, Deputy Municipal Clerk, received the Amendment to the Notice of Claim on July 17, 2010.<sup>7</sup> The Complainant further states that the Amendment to the Notice of Claim filed on July 17, 2010 must exist in the Custodian's files.

**March 13, 2012**

Letter from the Complainant to the Custodian. The Complainant states that the Custodian certified that she never received the Amendment to the Notice of Claim. The Complainant also states that the Custodian certified that she never filed the Amendment to the Notice of Claim on July 17, 2010.<sup>8</sup> The Complainant further states that because the Custodian did not date stamp the Amendment to the Notice of Claim, he has no way of knowing whether the Custodian filed this record.

**March 19, 2012<sup>9</sup>**

Letter from the Custodian to the Complainant. The Custodian states that she spoke with Ms. Docherty, who stated that she received the Complainant's letter on July 13, 2010.<sup>10</sup> The Custodian also states that the Complainant addressed his letter to "Kelly A. Kavanagh, Municipal Clerk, Municipal Court." The Custodian further states that the Complainant's letter was opened and forwarded to the office of the Municipal Court. The Custodian additionally states that the Amendment to the Notice of Claim is not located in the Clerk's Office.

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<sup>7</sup> The U.S. Certified Mail Receipt indicates that the Township of Belleville date stamped the receipt on July 17, 2010.

<sup>8</sup> The Custodian does not certify whether she filed the Amendment to the Notice of Claim on July 17, 2010.

<sup>9</sup> The Complainant submitted additional correspondence not relevant to the adjudication of this complaint.

<sup>10</sup> It appears from the evidence of record that the Custodian is referring to the date when the Complainant mailed his Notice of Claim and the Amendment to the Notice of Claim to the Township of Belleville.

## Analysis

### **Whether the Custodian timely responded to the Complainant's OPRA request?**

OPRA provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

Further, OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian's failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.<sup>11</sup> Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

The Complainant argued in his Denial of Access Complaint that the Custodian did not respond to his OPRA request. In the SOI, the Custodian admitted that she failed to respond to the Complainant's request.

Therefore, the Custodian did not timely respond to the Complainant's OPRA request. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a

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<sup>11</sup> It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

“deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, *supra*.

**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:

“... 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.

The Complainant filed an OPRA request seeking a copy of the date stamped Notice of Claim relevant to Complaint No. 012584 filed by the Complainant with the Municipal Clerk on July 10, 2010. The Custodian certified in the SOI that no Notice of Claim filed by the Complainant with the Municipal Clerk on July 10, 2010 exists. In a separate legal certification to the GRC dated January 5, 2012, the Custodian certified that no records responsive exist to the Complainant’s request for a Notice of Claim filed by the Complainant on July 10, 2010 with the Municipal Clerk relevant to Complaint No. 012584.

However, although the Custodian certified that there is no date stamped copy of the Notice of Claim filed with the Municipal Clerk on July 10, 2010 relevant to Complaint No. 012584, the Custodian submitted a copy of the Notice of Claim dated July 7, 2010 relevant to Complaint No. 012584 with her SOI. The Custodian certified in the SOI that the Complainant filed a Notice of Claim on July 7, 2010 that was received and distributed to the Township Attorney and Township Manager on July 8, 2010, not on July

10, 2010 as the Complainant requested. Therefore, although the Custodian submitted a copy of the Notice of Claim dated July 7, 2010 with the SOI, this record is not the record responsive to the Complainant's OPRA request because said record is not date stamped. However, the Notice of Claim dated July 7, 2010 that the Custodian submitted with the SOI appears to be the same record the Complainant seeks in his OPRA request because the Notice of Claim dated July 7, 2010 bears Complaint No. 012584, the same complaint number referenced in the Complainant's OPRA request.

Therefore, the GRC declines to order disclosure of the Notice of Claim relevant to Complaint No. 012584 because the Custodian submitted this record to the Complainant with the SOI.

The Complainant also requested a date stamped copy of the Amendment to the Notice of Claim filed with the Municipal Clerk on July 17, 2010 relevant to Complaint No. 012584. The Custodian certified that there are no records responsive to the Complainant's request for an Amendment to the Notice of Claim filed by the Complainant on July 17, 2010 relevant to Complaint No. 012584.

Pursuant to *N.J.A.C. 1:1-15.2(a)* and (b), official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions, because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. *See Sanders v. Division of Motor Vehicles*, 131 N.J. Super. 95 (App. Div. 1974).

Thus, the Council takes judicial notice of the Custodian's SOI submitted to the GRC in Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-258 (March 2010). In that case, the Custodian included as part of the SOI a letter dated September 22, 2010 to which she attached a copy of an Amendment to the Notice of Claim dated July 12, 2010 relevant to Complaint No. 012584. However, this Amendment to the Notice of Claim is not date stamped as requested by the Complainant in the instant matter. Regardless, the Amendment to the Notice of Claim that the Custodian submitted to the GRC as part of the SOI in GRC Complaint No. 2010-258 bears Complaint No. 012584, the same complaint number that the Complainant seeks in the matter now before the Council.

Therefore, based on the contested facts in this complaint, the GRC is unable to determine whether Amendment to the Notice of Claim dated July 12, 2010 is the record responsive to the Complainant's OPRA request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not timely respond to the Complainant's OPRA request. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The GRC declines to order disclosure of the Notice of Claim relevant to Complaint No. 012584 because the Custodian submitted this record to the Complainant with the Statement of Information.
3. Based on the contested facts in this complaint, the GRC is unable to determine whether Amendment to the Notice of Claim dated July 12, 2010 is the record responsive to the Complainant's OPRA request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Harlynn A. Lack, Esq.  
Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

June 19, 2012