



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  
Acting Commissioner

**FINAL DECISION**

**March 27, 2012 Government Records Council Meeting**

Vladimir Pavlenko  
Complainant

Complaint No. 2010-325

v.

Township of Delran (Burlington)  
Custodian of Record

At the March 27, 2012 public meeting, the Government Records Council (“Council”) considered the March 20, 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 because the Custodian has certified that no records responsive to the Complainant’s OPRA request exist and there is no credible evidence in the record to refute the Custodian’s certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6.

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 27<sup>th</sup> Day of March, 2012

Robin Berg Tabakin, Chair  
Government Records Council

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

Catherine Starghill, Executive Director  
Government Records Council

**Decision Distribution Date: April 4, 2012**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 27, 2012 Council Meeting**

**Vladimir Pavlenko<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-325**

v.

**Township of Delran (Burlington)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of initial building permit and all other permits for 30 River Drive, Delran, NJ 08075.<sup>3</sup>

**Request Made:** April 16, 2010

**Response Made:** April 21, 2010

**Custodian:** Jamey Eggers

**GRC Complaint Filed:** December 10, 2010<sup>4</sup>

**Background**

**April 16, 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

**April 21, 2010**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the third (3<sup>rd</sup>) business day following receipt of such request. The Custodian states that he could not locate the initial building permit for block 3, lot 19. The Custodian asserts that permits for residential properties are only required to be maintained for ten (10) years. The Custodian further states that because the requested permits date back to the 1970s, there is no longer any record of the requested building permits in the Township Tax Assessor's office or in the Township Construction office.

**June 21, 2010**

Letter from the Complainant's Counsel to the Complainant.<sup>5</sup> Counsel states that he has done his best to attempt to locate permits for 30 River Drive from February 1971.

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

<sup>2</sup> Represented by Douglas M. Long, Esq., of Long, Marmero, & Associates, LLP (Woodbury, NJ).

<sup>3</sup> Additional records were requested that are not at issue in the instant Complaint.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

<sup>5</sup> The Complainant is not represented by counsel in this Complaint.

Counsel asserts that the Township was able to locate an application for a building permit and zoning permit for 30 River Drive, but not a corresponding permit. Counsel states that if the Township does not receive an additional response from the Complainant, the file for this request will be closed.

**December 10, 2010**

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

- Complainant’s OPRA request dated April 16, 2010
- Custodian’s response to the OPRA request dated April 21, 2010<sup>6</sup>
- Complainant Counsel’s letter to the Complainant dated June 21, 2010

The Complainant states that in conversations with the Custodian that predate this matter, the Custodian informed the Complainant that the Township did not have the requested permits. The Complainant states that he then hired an attorney to retrieve the requested records. The Complainant asserts that his counsel was able to retrieve an application for a building permit and a zoning permit, but not the building permits themselves. The Complainant states that he believes the building permit was removed from the file.

The Complainant asserts that the Destruction of Public Records Law, N.J.S.A. 47:3-15 through 32, prevents the Custodian from destroying public records without first securing permission. The Complainant request that the GRC compel the Township to find the building permit for block 3, lot 19, Delran Township, Burlington County, NJ.

The Complainant does not agree to mediate this complaint.

**December 21, 2010**

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

**December 23, 2010**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated April 16, 2010
- Custodian’s response to the OPRA request dated April 21, 2010<sup>7</sup>

The Custodian certifies that the current records retention schedule adopted by the Division of Archives and Records Management (“DARM”) requires the retention of all construction permits for the life of the structure. The Custodian certifies that the prior version of this requirement that was effective until 1985 only required a retention period of six (6) years. The Custodian contends that because the structure corresponding to the Complainant’s OPRA request was built in 1971, the Township was only required to retain a copy of the permit until 1977. The Custodian certifies that the Township’s Counsel confirmed such with the Director of DARM, Karl Niederer.

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<sup>6</sup> The Complainant attached additional correspondence not relevant to the adjudication of this Complaint.

<sup>7</sup> The Custodian attached additional correspondence not relevant to the adjudication of this Complaint.

## 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:

“... 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:

“[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.

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 this case, the Complainant’s OPRA request sought the initial building permit and all other permits for 30 River Drive, Delran, NJ 08075. In response, the Custodian stated that permits for residential properties are only required to be maintained for ten (10) years, and that because the requested permits date back to the 1970s, there is no longer any record of the requested building permits in the Township Tax Assessor’s Office or in the Township Construction office.

The Council has consistently held that there exists no denial of access when a custodian has demonstrated that no records responsive to a complainant's request exist. In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The Custodian responded stating that there was no record of any telephone calls made to the Complainant. The Custodian subsequently certified that no records responsive to the Complainant's request existed and the Complainant submitted no evidence to refute said certification. The GRC held the Custodian did not unlawfully deny access to the requested records because the Custodian certified that no records responsive to the request existed.

As in Pusterhofer, the Custodian in the instant matter has certified that there are no records in the Township's possession that are responsive to the Complainant's request. The Custodian certifies that the permits sought by the Complainant originate from the 1970s and pursuant to the Division of Archives and Records Management's previously prescribed records retention schedule<sup>8</sup>, the responsive records have been disposed of. Furthermore, the Complainant has provided evidence that an attorney the Complainant previously hired to retrieve the records also found the requested permits to be non-existent. Accordingly, in the absence of any competent evidence to the contrary, the Custodian has legally discharged their statutory duties under OPRA.

Therefore, because the Custodian has certified that no records responsive to the Complainant's OPRA request exist and there is no credible evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Custodian has certified that no records responsive to the Complainant's OPRA request exist and there is no credible evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6.

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

March 20, 2012

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<sup>8</sup> The Custodian certifies that the current records retention schedule adopted by the Division of Archives and Records Management ("DARM") requires the retention of all construction permits for the life of the structure. The Custodian certifies that the prior version of this requirement that was effective until 1985 only required a retention period of six (6) years.

