



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

December 18, 2012 Government Records Council Meeting

Reginald R. Cole
Complainant

Complaint No. 2011-236

v.

Township of Montague (Sussex)
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the October 23, 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. Because the Custodian certified in the Statement of Information that the Township provided access to all responsive records on May 24, 2011, the Custodian did not unlawfully deny access to any requested records. Moreover, there is no competent, credible evidence in the record to refute the Custodian’s certification. *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.)
2. The GRC has no authority over the accuracy or content of records pursuant to N.J.S.A. 47:1A-7.b., *Kwanzaa v. Department of Corrections*, GRC Complaint No. 2004-167 (March 2005); *Toscano v. NJ Dept. of Labor*, GRC Complaint No. 2005-59 (September 2005); *Gillespie v. Newark Public Schools*, GRC Complaint No. 2004-105 (November 2004); *Katinsky v. River Vale Township*, GRC Complaint No. 2003-68 (November 2003). *See also LoBosco v. NJ Dept. of Health & Human Services, Div. of Certificate of Need & Healthcare Facility Licensure*, GRC Complaint No. 2010-64 (October 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 18th Day of December, 2012

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: December 20, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 18, 2012 Council Meeting**

**Reginald R. Cole¹
Complainant**

GRC Complaint No. 2011-236

v.

**Township of Montague (Sussex)²
Custodian of Records**

Records Relevant to Complaint: Copies of building permits for house, building permits for garage, electric permits, plumbing permits, well permits, septic permit, certificate of occupancy and variance on chicken coop for Block 48.01 Lot 6 (previously known as Block 48, Lot 11A).

Request Made: May 17, 2011

Response Made: May 24, 2011

Custodian: Eileen DeFratis

GRC Complaint Filed: July 12, 2011³

Background

May 17, 2011

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. The Complainant notes that attached is a copy of records retention schedule for building officials that requires retention of permits for the life of the structure.

May 24, 2011

Custodian's response to the OPRA request. The Custodian responds to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request. The Custodian provides the following records to the Complainant:⁴

- "Municipal Local Building Official M190000-006" records retention schedule (2 pages).
- "Sewage Disposal System Inspection" dated October 21, 1971 (1 page).
- "Application for Permit to Locate and Construct a New, Alter, or Repair an Individual Sewage Disposal Device" dated November 24, 1971 (7 pages).

¹ No legal representation listed on record.

² Represented by Michael S. Gatofalo, Esq., of Laddey, Clark & Ryan, LLP (Sparta).

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

⁴ The Custodian included no letter with her response. However, the Complainant provided these documents to the GRC as part of his Denial of Access Complaint. Further, the Complainant provided to the GRC a copy of his OPRA request with dated signature thereon by Ms. Laura Cole dated May 24, 2011.

- “Application for Building Permit” dated June 9, 1978 (1 page).
- Letter from Ms. Linda Kelly (“Ms. Kelly”) to the Complainant dated June 25, 2009 (1 page).

July 12, 2011

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

- Complainant’s OPRA request dated May 17, 2011 (with attachment).
- Records provided:
 - “Municipal Local Building Official M190000-006” records retention schedule (2 pages).
 - “Sewage Disposal System Inspection” dated October 21, 1971 (1 page).
 - “Application for Permit to Locate and Construct a New, Alter, or Repair an Individual Sewage Disposal Device” dated November 24, 1971 (7 pages).
 - “Application for Building Permit” dated June 9, 1978 (1 page).
 - Letter from Ms. Linda Kelly (“Ms. Kelly”) to the Complainant dated June 25, 2009 (1 page).

The Complainant states that he submitted an OPRA request to the Township of Montague (“Township”) on May 17, 2011. The Complainant states that attached are the records provided by the Township.⁵

The Complainant argues that the letter from Ms. Kelly states that no building permits are on file with the Township. The Complainant further asserts that the records provided to him do not match the block and lot number he provided to the Township. The Complainant further notes that his signature on the application dated November 24, 1971 has the wrong middle initial.

The Complainant does not agree to mediate this complaint.

July 14, 2011

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

July 20, 2011

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated May 17, 2011 (with attachment).
- Records provided:
 - “Municipal Local Building Official M190000-006” records retention schedule (2 pages).
 - “Sewage Disposal System Inspection” dated October 21, 1971 (1 page).
 - “Application for Permit to Locate and Construct a New, Alter, or Repair an Individual Sewage Disposal Device” dated November 24, 1971 (7 pages).

⁵ The Complainant provides no date on which he was provided with responsive records.
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- “Application for Building Permit” dated June 9, 1978 (1 page).
- Letter from Ms. Linda Kelly (“Ms. Kelly”) to the Complainant dated June 25, 2009 (1 page).

The Custodian certifies that her search for the requested records involved searching through the Township’s Construction Department files related to the block and lot provided by the Complainant.

The Custodian also certifies that no records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services.

The Custodian certifies that she received the Complainant’s OPRA request on May 17, 2011. The Custodian certifies that she responded on May 24, 2011 providing the Complainant with all records in the Township’s possession relative to the block and lot number provided by the Complainant.

The Custodian asserts that the Township has no legal obligation to prove that a specific record exists; rather, the Township’s only obligation is to grant access to those records responsive to the Complainant’s OPRA request. The Custodian certifies that here, the Complainant sought records from 40 years ago. The Custodian certifies that the Complainant has provided no evidence indicating that the records he asserts the Custodian denied him access to ever existed.

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 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 herein submitted an OPRA request to the Custodian on May 17, 2011. The Complainant filed this complaint arguing that he was provided with some records, but that they were not all of the records the Complainant sought and that some of the records contained misinformation.

In the SOI, the Custodian certified that she received the Complainant’s OPRA request on May 17, 2011. The Custodian also certified that on May 24, 2011, she sent five (5) records to the Complainant. Moreover, the Custodian certified that she provided all records responsive that existed in the Township’s possession. The Custodian further noted that a custodian has an obligation to provide those records that exist and that the Complainant has not provided any evidence to show that the permits he contends were not provided ever existed.

The Custodian’s SOI response is corroborated by the evidence of record. Specifically, the Custodian provided to the GRC a letter to the Complainant from Ms. Kelly dated June 25, 2009 advising the Complainant that she was unable to locate any permits for the original construction of the Complainant’s home. This letter is consistent with the Custodian’s certification in the instant complaint.

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 matter, the evidence of record indicates that the Custodian responded in a timely manner providing access to all responsive records. Additionally, there is no evidence in the record to refute the Custodian’s certification.

Therefore, because the Custodian certified in the SOI that the Township provided access to all responsive records on May 24, 2011, the Custodian did not unlawfully deny access to any requested records. Moreover, there is no competent, credible evidence in the record to refute the Custodian’s certification. *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.)

Regarding the Complainant’s assertion that the records provided contained certain misinformation, the GRC has no authority over the accuracy or content of a record. N.J.S.A. 47:1A-7.b. delineates the Council’s powers and duties. Such powers and duties do not include authority over a record’s accuracy or content of a record.

In Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005), the Council held that it “does not oversee the content of documentation” but “does oversee the disclosure and non-disclosure of documents.” *See also Toscano v. NJ Dept.*

of Labor, GRC Complaint No. 2005-59 (September 2005)(the GRC does not have authority over the condition of records provided by a Custodian); Gillespie v. Newark Public Schools, GRC Complaint No. 2004-105 (November 2004)(the GRC does not have the authority to adjudicate the validity of a record); Katinsky v. River Vale Township, GRC Complaint No. 2003-68 (November 2003)(the integrity of a requested record is not within the GRC's authority to adjudicate).

Therefore, the GRC has no authority over the accuracy or content of records pursuant to N.J.S.A. 47:1A-7.b., Kwanzaa, supra; Toscano, supra; Gillespie, supra; and Katinsky, supra. See also LoBosco v. NJ Dept. of Health & Human Services, Div. of Certificate of Need & Healthcare Facility Licensure, GRC Complaint No. 2010-64 (October 2010).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian certified in the Statement of Information that the Township provided access to all responsive records on May 24, 2011, the Custodian did not unlawfully deny access to any requested records. Moreover, there is no competent, credible evidence in the record to refute the Custodian's certification. 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.)
2. The GRC has no authority over the accuracy or content of records pursuant to N.J.S.A. 47:1A-7.b., Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005); Toscano v. NJ Dept. of Labor, GRC Complaint No. 2005-59 (September 2005); Gillespie v. Newark Public Schools, GRC Complaint No. 2004-105 (November 2004); Katinsky v. River Vale Township, GRC Complaint No. 2003-68 (November 2003). See also LoBosco v. NJ Dept. of Health & Human Services, Div. of Certificate of Need & Healthcare Facility Licensure, GRC Complaint No. 2010-64 (October 2010).

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

October 23, 2012⁶

⁶ This complaint was prepared and scheduled for adjudication at the Council's October 30, 2012 meeting; however, said meeting was cancelled due to Hurricane Sandy. Additionally, the Council's November 27, 2012 meeting was cancelled due to lack of quorum.