



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

June 25, 2013 Government Records Council Meeting

Bonnie L. Riley
Complainant

Complaint No. 2012-120

v.

Oxford Township (Warren)
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council ("Council") considered the June 18, 2013 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 since the Custodian initially responded that no records responsive exist and further certified in the Statement of Information and on May 16, 2013, that no records responsive to the Complainant's OPRA requests exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005).

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 June, 2013

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

Steven Ritardi, Esq., Acting Chair
Government Records Council

Decision Distribution Date: June 27, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2013 Council Meeting**

**Bonnie L. Riley¹
Complainant**

GRC Complaint No. 2012-120

v.

**Oxford Township (Warren)²
Custodian of Records**

Records Relevant to Complaint: Hard copies via pickup of:³

February 1, 2012 OPRA request:

1. Bill list for the February 1, 2012 meeting.
2. Printout of receipts for January 2012.
3. Printout of disbursements for January 2012.

February 15, 2012 OPRA request:

1. List of bills for February 15, 2012 meeting.
2. Cash Receipts Journal printout for January 2012.
3. Disbursement Journal printout for January 2012.

Request Made: February 1, 2012 and February 15, 2012

Response Made: February 12, 2012 and February 24, 2012

GRC Complaint Filed: April 13, 2012⁴

Background⁵

Request and Response:

On February 1, 2012, the Complainant submitted an Open Public Records Act ("OPRA") request seeking the above-listed records. The Custodian responded in writing stating that no

¹ No legal representation listed on record.

² Shelia Obertly, Custodian of Records. Represented by Michael S. Garofalo, Esq., of Laddey, Clark, & Ryan, LLP (Sparta, NJ).

³ The Complainant's OPRA requests sought additional records that are not at issue in this complaint.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

records exist.⁶ On February 15, 2012, the Complainant e-mailed the Custodian asking for clarification of her response. The Custodian advised that it meant no records exist. However, the Custodian suggested the Complainant contact Dawn Stanchina, Chief Financial Officer (“CFO Stanchina”) for further information. The Complainant e-mailed CFO Stanchina on the same day but received no response.

On February 15, 2012, the Complainant submitted another OPRA request seeking the above-listed records. The Custodian responded in writing stating that no records exist.⁷ On March 6, 2012, the Complainant e-mailed CFO Stanchina again seeking clarification of the response that no records exist. The Complainant asked CFO Stanchina if it means that she can no longer get a report from Oxford Township’s (“Township”) accounting system or that the records are not subject to access under OPRA. CFO Stanchina did not respond to the Complainant’s e-mail.

It should be noted that both OPRA requests sought copies of all vouchers for the meetings initiated and the Custodian provided copies to the Complainant. These vouchers are not the subject of this complaint.

Denial of Access Complaint:

On April 13, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that she previously served as a Township Committee member and knows that the responsive reports are available in the Township’s accounting system. The Complainant asserts, “[t]here are no list[s] of bills paid shown in the monthly minutes and [the Complainant] feels as a taxpayer [she has] the right to this information.”

Statement of Information:

On May 21, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA requests on February 1, 2012 and February 15, 2012 respectively. The Custodian certifies that she responded to both requests advising that the records at issue here did not exist.

The Custodian certifies that the Committee is provided with vouchers and not a separate “bill list” for each meeting. The Custodian certifies that the Committee members individually inspect each voucher. The Custodian certifies that the Township does not maintain a printout of cash receipts and disbursements, as requested. The Custodian contends that the Complainant failed to ask for specific cash receipts and/or disbursements that the Custodian would have provided upon request.

⁶ The Complainant and Custodian provide conflicting dates of response, however both dates are within the statutory mandated time frame to respond.

⁷ The Complainant and Custodian provide conflicting dates of response, however both dates are within the statutory mandated time frame to respond.

Additional Information:

On May 3, 2013, the GRC requested from the Custodian additional information clarifying whether the Township maintained the responsive records electronically in a database and could easily be queried and printed. The GRC requested that the Custodian submit her response in the form of a legal certification by close of business on May 8, 2013. On May 8, 2013, the Custodian's Counsel requested an extension of time to submit its response. The GRC responded granting an extension until May 10, 2013.

On May 16, 2013, the Custodian submitted her legal certification attesting that the Township meets once a month and that CFO Stanchina prepares vouchers to be individually printed and signed by the Township's Committee members. The Custodian certifies that CFO Stanchina also prepares checks for each voucher prior to their approval so that she is prepared to pay the approved vouchers. The Custodian certifies that the printing of checks for each voucher makes it impossible to query and print a bill list because CFO Stanchina's check-writing system does not sort or capture vouchers based on the date they were presented to the Committee. The Custodian certifies she cannot provide responsive records to any request for a bill list presented to the Committee at any given meeting.

Analysis⁸

Unlawful Denial of Access

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 Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that certified that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian's certification. The Council subsequently determined that "[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access."

Here, the Custodian responded to both OPRA requests advising that no records responsive exist. The Complainant disputed the Custodian's response arguing that the responsive lists should be available through the Township's accounting software. The Complainant also noted that the Township's minutes did not include a list of bills paid. The Custodian subsequently certified in the SOI, and again on May 16, 2013, that the responsive records did not exist.

⁸ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

Thus, since the Custodian initially responded that no records responsive exist and further certified in the SOI and on May 16, 2013, that no records responsive to the Complainant's OPRA requests exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer, supra.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that since the Custodian initially responded that no records responsive exist and further certified in the Statement of Information and on May 16, 2013, that no records responsive to the Complainant's OPRA requests exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Senior Case Manager

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

June 18, 2013