



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

April 29, 2014 Government Records Council Meeting

Michael Palmer
Complainant

Complaint No.: 2012-123

v.

Township of Irvington Police Department (Essex)
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that this complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on November 1, 2013 and further failed to submit to the GRC an explanation for his failure to appear within thirteen (13) days.

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 29th Day of April, 2014

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: May 2, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 29, 2014 Council Meeting**

**Michael Palmer¹
Complainant**

GRC Complaint No. 2012-123

v.

**Township of Irvington Police Department (Essex)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. All witness statements taken on August 4, 2001 under Irvington Police Department file no. 01-33347.
2. All crime scene photographs taken of all evidence on August 4, 2001 under Irvington Police Department file no. 01-33347.
3. Incident report taken on August 4, 2001 under Irvington Police Department file no. 01-33347.
4. Irvington Police Department Standard Operating Procedures from 2001 re: handling shooting victims at crime scenes.

Custodian of Records: Joseph Santiago

Request Received by Custodian: February 28, 2012

Response Made by Custodian: February 29, 2012³

GRC Complaint Received: April 19, 2012

Background⁴

April 30, 2013

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the April 23, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council therefore found that:

¹ No legal representation listed on record.

² No legal representation listed on record.

³ 2012 was a leap year.

⁴ 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.

Michael Palmer v. Township of Irvington Police Department (Essex) – Supplemental Findings and Recommendations of the Executive Director

[T]he Custodian failed to respond to the GRC's requests for a Statement of Information, which is the Custodian's opportunity to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6. Based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian lawfully or unlawfully denied access to the requested records, or whether the requested records even exist on file with the Irvington Police Department. 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 determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History

On April 30, 2013 the Council's distributed its Interim Order ("Order") to the parties. On April 19, 2013 the GRC transmitted the Complaint to the Office of Administrative ("OAL"). On January 11, 2013 the Complaint was transmitted back from the OAL because the Complainant failed to appear for a scheduled hearing on November 1, 2013. The Complainant failed to submit to the GRC an explanation for his failure to appear within thirteen (13) days. N.J.A.C. 1:1-18.4(a).

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on November 1, 2013 and further failed to submit to the GRC an explanation for his failure to appear within thirteen (13) days.

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

April 22, 2014



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

INTERIM ORDER

April 30, 2013 Government Records Council Meeting

Michael Palmer
Complainant

Complaint No. 2012-123

v.

Township of Irvington Police Department (Essex)
Custodian of Record

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the April 23, 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 the Custodian failed to respond to the GRC’s requests for a Statement of Information, which is the Custodian’s opportunity to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6. Based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian lawfully or unlawfully denied access to the requested records, or whether the requested records even exist on file with the Irvington Police Department. 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 determination of whether the original 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 30th Day of April, 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: May 1, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 30, 2013 Council Meeting**

**Michael Palmer¹
Complainant**

GRC Complaint No. 2012-123

v.

**Township of Irvington Police Department (Essex)²
Custodian of Records**

Records Relevant to Complaint: Copies of:

1. All witness statements taken on August 4, 2001 under Irvington Police Department file no. 01-33347.
2. All crime scene photographs taken of all evidence on August 4, 2001 under Irvington Police Department file no. 01-33347.
3. Incident report taken on August 4, 2001 under Irvington Police Department file no. 01-33347.
4. Irvington Police Department Standard Operating Procedures from 2001 re: handling shooting victims at crime scenes.

Request Made: February 28, 2012

Response Made: February 29, 2012

GRC Complaint Filed: April 19, 2012³

Background⁴

Request and Response:

On February 28, 2012, the Complainant submitted his Open Public Records Act (“OPRA”) request seeking the above listed records. On February 29, 2012, the next business day, the Custodian responded to the Complainant’s request denying the Complainant’s request and stating that the Complainant must request the records from the Essex County Prosecutor’s Office.

¹ No legal representation listed on record.

² Joseph Santiago, Custodian of Records. No legal representation listed on record.

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

⁴ 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.

Denial of Access Complaint:

On April 19, 2012, the Government Records Council (“GRC”) received the Complainant’s Denial of Access Complaint alleging an unlawful denial of access to the above listed records. The Complainant asserts that the requested records are in the possession of the Irvington Police Department under file no. 01-33347.

Statement of Information:

The Custodian failed to file any response to the Complainant’s Denial of Access Complaint with the GRC. Specifically, the Custodian failed to respond to the GRC’s Offer of Mediation dated May 18, 2012. The Custodian also failed to respond to the GRC’s request for a Statement of Information dated June 12, 2012. Finally, the Custodian failed to respond to the GRC’s final request for an SOI dated July 10, 2012.

Analysis⁵

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.

Here, the Custodian failed to respond to the GRC’s requests for a Statement of Information, which is the Custodian’s opportunity to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6. Based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian lawfully or unlawfully denied access to the requested records, or whether the requested records even exist on file with the Irvington Police Department. 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 determination of whether the original 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 the Custodian failed to respond to the GRC’s requests for a Statement of Information, which is the Custodian’s opportunity to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6. Based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian lawfully or unlawfully denied access to the requested records, or whether the requested records even exist on file with the Irvington Police Department. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the

⁵ 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.

facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Dara L. Barry
Communications Manager

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

April 23, 2013