



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

June 25, 2013 Government Records Council Meeting

Sabino Valdes
Complainant

Complaint No. 2012-181

v.

Township of Belleville (Essex)
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 that it has no authority over the content of the record provided. N.J.S.A. 47:1A-7(b); Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005). *See also* Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-258 (March 2012). Further, the Custodian did not unlawfully deny access to the requested OPRA request form since the evidence of record supports that she provided same to the Complainant in a timely manner. *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.)

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**

**Sabino Valdes¹
Complainant**

GRC Complaint No. 2012-181

v.

**Township of Belleville (Essex)²
Custodian of Records**

Records Relevant to Complaint: “Copy of Open Public Records Act (“OPRA”) request dated March 13, 2012 signed by the Township’s Records Custodian pursuant [OPRA], denying [the Complainant’s] request for a copy of the Amendment to the Notice of Claim relevant to Complaint No. 012584 received by the Township on July 13, 2010.”(hardcopy via U.S. mail).

Request Made: May 31, 2012

Response Made: June 5, 2012

GRC Complaint Filed: June 15, 2012³

Background⁴

Request and Response:

On May 31, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records, which pertain to a separate OPRA request the Complainant made on March 13, 2012. On June 5, 2012, the second (2nd) business day following receipt of said request,⁵ the Custodian responded in writing providing access to the responsive record.

Denial of Access Complaint:

On June 15, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that he sought the March 13, 2012 OPRA request form because the Custodian denied him access to a copy of Amendment to a Notice of Claim filed July 17, 2010 and failed to provide him with a copy of the form containing

¹ No legal representation listed on record.

² Kelly A. Cavanagh, Custodian of Records. Represented by Thomas Murphy, Esq. (Belleville, NJ).

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.

⁵ The Custodian certifies in the Statement of Information that she received the Complainant’s OPRA request on June 1, 2012.

her signature and reason for denial of access thereon. The Complainant states that OPRA provides that a custodian denying access to a record "... shall indicate the specific basis ..." on the form, sign and date the form and return a copy to the requestor. N.J.S.A. 47:1A-5(g). The Complainant contends that this provision is mandatory; however, the form the Custodian disclosed did not contain her signature. The Complainant contends that N.J.S.A. 47:1A-5(g) is meaningless if the Custodian is permitted to deny access to OPRA requests in a letter.

The Complainant further contends that the Council should take judicial notice of the misleading information provided to the GRC by the Custodian in GRC Complaint No. 2010-258 when considering the complaint at issue.⁶

Statement of Information:

On July 9, 2012, the Custodian filed a Statement of Information ("SOI") certifying that she received the Complainant's OPRA request on June 1, 2012. The Custodian certifies that she responded in writing on June 5, 2012 providing the responsive form. The Custodian certifies that she did not deny access to any records.

Analysis⁷

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.

OPRA delineates the Council's powers and duties. N.J.S.A. 47:1A-7(b). Such powers and duties do not include authority over the content of a record. Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005)(holding that the Council "does not oversee the content of documentation" but "does oversee the disclosure and non-disclosure of documents.")

Here, the Complainant does not dispute that he received a response from the Custodian, as he attached a copy of the record the Custodian provided to him with the Denial of Access Complaint. Furthermore, the Custodian certified in the SOI that she provided the responsive OPRA request form on June 5, 2012. However, the Complainant argued that the Custodian failed to provide him with a copy of the responsive OPRA request form bearing the Custodian's signature and reason for denying access as required under N.J.S.A. 47:1A-5(g). This issue therefore, is one of content, for which the Council has no authority.

⁶ The Council referred GRC Complaint No. 2010-258 to the Office of Administrative Law for a hearing to resolve the facts and a determination of whether the custodian knowingly and willfully violated OPRA.

⁷ 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.

Therefore, the Council has no authority over the content of the record provided. N.J.S.A. 47:1A-7(b); Kwanzaa, supra. See also Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-258 (March 2012). Further, the Custodian did not unlawfully deny access to the requested OPRA request form since the evidence of record supports that she provided same to the Complainant in a timely manner. 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.)

The Council notes the Complainant has a valid concern that the Custodian's failure to sign the requested OPRA request form in accordance with N.J.S.A. 47:1A-5(g) may be a technical violation of OPRA. However, the Council routinely recognizes as sufficient a custodian's written response to a request even when same is not on the official OPRA request form. See Valdes v. New Jersey Department of Education, GRC Complaint No. 2010-256 (March 2012) at 6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that it has no authority over the content of the record provided. N.J.S.A. 47:1A-7(b); Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005). See also Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-258 (March 2012). Further, the Custodian did not unlawfully deny access to the requested OPRA request form since the evidence of record supports that she provided same to the Complainant in a timely manner. 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.)

Prepared By: Frank F. Caruso
Senior Case Manager

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

June 18, 2013