



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

July 23, 2013 Government Records Council Meeting

Stephen Lankenau
Complainant

Complaint No. 2012-233

v.

Pemberton Borough (Burlington)
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council (“Council”) considered the July 16, 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 provided all responsive records to the Complainant and there is no evidence in the record to refute the Custodian’s Statement of Information certification, the Custodian did not unlawfully deny access to any 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 23rd Day of July 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: July 26, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 23, 2013 Council Meeting**

**Stephen Lankenau¹
Complainant**

GRC Complaint No. 2012-233

v.

**Pemberton Borough (Burlington)²
Custodian of Records**

Records Relevant to Complaint: Copies via pickup of all petty cash receipts for Boyd's Pharmacy and all miscellaneous vendors.

Request Made: August 7, 2012

Response Made: August 7, 2012

GRC Complaint Filed: August 7, 2012³

Background⁴

Request and Response:

On August 2, 2012, the Complainant submitted an Open Public Records Act ("OPRA") request separate from the one at issue here, seeking all petty cash receipts for 2011. On August 6, 2012, the Custodian responded advising that records were available for pickup. The Complainant paid \$2.45 on the same day and received 49 pages of records.

On August 7, 2012, the Complainant submitted another OPRA request, the one at issue here. The Custodian responded in writing that day stating that the Complainant's request is improper under OPRA; however, she indicated that she previously provided the Complainant with every petty cash receipt between the dates identified by the Complainant.

Denial of Access Complaint:

On August 7, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"), disputing the Custodian's response that all responsive petty cash receipts were provided. The Complainant contends that he did not receive any receipts

¹ No legal representation listed on record.

² Donna Mull, Custodian of Records. Represented by David M. Serlin, Esq. (Moorestown, 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.

for Boyd's Pharmacy. The Complainant asserts that two (2) Pemberton Borough ("Borough") employees expressed to him that the Custodian has used petty cash to pay for prescriptions and that receipts exist. The Complainant contends that the Custodian's failure to provide any records is a violation of OPRA.

Statement of Information:

On September 17, 2012, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that she denied the Complainant's OPRA request because same failed to identify a particular date or time period and miscellaneous vendors is an overly broad term. The Custodian further certifies that notwithstanding this fact, she advised the Complainant that he was provided with every receipt that existed in response to the August 2, 2012 OPRA request.

The Custodian certifies that the Complainant previously submitted OPRA requests for petty cash receipts on January 18, 2012 and February 27, 2012 for a seven (7) and three (3) year period respectively. The Custodian certifies that she has attached records showing that the Complainant has also been provided with invoices for Boyd's Pharmacy for the past 5 years. The Custodian certifies that she has provided the Complainant with all responsive records to include petty cash receipts for Boyd's Pharmacy.

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 Complainant submitted the OPRA request at issue because he believed the Custodian failed to provide petty cash receipts for Boyd's Pharmacy and all miscellaneous vendors for 2011 in response to the Complainant's August 2, 2012 OPRA request. The Custodian responded advising that the OPRA request was invalid, but that the Complainant was already provided with all petty cash receipts for the date requested in response to the August 2, 2012 OPRA request. In the SOI, the Custodian attached 49 pages of records that she provided to the Complainant pursuant to the previous request. The Custodian further certified that the receipts provided represented all records that existed.

A review of said records indicates that the Complainant received two (2) receipts for Boyd's Pharmacy as well as receipts from several other vendors such as Advanced Auto Parts and Wal-Mart. The evidence of record further supports that the Complainant received all 49 pages of records because he remitted \$2.45 (49 pages at \$0.05 per page) to the Custodian on

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.

August 6, 2012. Thus, the evidence supports that the Custodian provided all responsive records to the Complainant and did not unlawfully deny access to any records.

Therefore, since the Custodian provided all responsive records to the Complainant and there is no evidence in the record to refute the Custodian's SOI certification, the Custodian did not unlawfully deny access to any records. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that since the Custodian provided all responsive records to the Complainant and there is no evidence in the record to refute the Custodian's Statement of Information certification, the Custodian did not unlawfully deny access to any records. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Senior Case Manager

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

July 16, 2013