



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

July 23, 2013 Government Records Council Meeting

Stanley T. Baker, Jr.
Complainant

Complaint No. 2012-309

v.

New Jersey State Parole Board
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 the Custodian did not unlawfully deny access to the records responsive to the request because the Custodian disclosed to the Complainant in a timely manner the daily/weekly sign-in sheet for the time period September 24, 2012 to September 28, 2012, and certified that no other records responsive to the request exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. *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 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**

**Stanley T. Baker, Jr.¹
Complainant**

GRC Complaint No. 2012-309

v.

**New Jersey State Parole Board²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of the daily/weekly sign-in sheets used by the New Jersey State Parole Board (“Parole Board”) at Bayside State Prison for August and September, 2012.³

Custodian of Records: Dina Rogers, Esq.

Request Received by Custodian: October 2, 2012

Response Made by Custodian: October 12, 2012

GRC Complaint Signed by the Complainant: October 24, 2012

Background⁴

Request and Response:

On October 2, 2012, the Custodian received the Complainant’s Open Public Records Act (“OPRA”) request seeking the above-listed records. On October 12, 2012, the seventh (7th) business day following receipt of said request, the Custodian responded in writing via e-mail requesting an extension of time until Monday, October 15, 2012, to address the Complainant’s request.⁵ Thereafter, on October 15, 2012, the Custodian responded in writing to the Complainant disclosing the daily/weekly sign-in sheet for Bayside State Prison for the time period September 24, 2012 to September 28, 2012, and denying the Complainant’s request for any other sign-in sheets during the time period relevant to the request because she stated same are nonexistent.

Denial of Access Complaint:

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Christopher Josephson.

³ There were other records requested that are not relevant to this complaint.

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 Complainant replied via e-mail on October 12, 2012, informing the Custodian that a response anytime during the week of October 15th was acceptable.

On October 24, 2012, the Complainant signed a Denial of Access Complaint which he filed with the Government Records Council (“GRC”). The Complainant asserts that he provided his request to the Custodian on October 2, 2012, and that the Custodian denied his request on October 15, 2012.

The Complainant states that he was only provided with a daily/weekly sign-in sheet for Bayside State Prison for the week of September 24, 2012 to September 28, 2012. The Complainant further states that he had reason to believe other records responsive to his request existed and therefore he requested clarification from the Custodian via e-mail dated October 16, 2012. The Complainant states that the Custodian informed him via reply e-mail that, “[i]n regards to [Bayside State Prison], I was advised by the Unit Supervisor that the daily/weekly sign in sheets prior to September 24, 2012 were not retained as the Unit Supervisor only retains the sign in sheets for approximately two weeks for the purpose of verifying employees’ time sheets. Therefore, the [Parole Board] does not have the records prior to September 23, 2012.”

The Complainant states that, as a Parole Board employee who formerly worked at Bayside State Prison, he knows that unit supervisors retained three (3) months of sign-in sheets in a binder. The Complainant attached to his report three sign-in sheets that he claimed to have copied on July 23, 2012. The attached sign-in sheets are dated for the weeks beginning July 2, July 9, and July 16, 2012. The Complainant states that he included copies of the sign-in sheets from the binder to support his claim that Bayside State Prison retains several months of sign-in sheets within the binder. The Complainant states that, although he no longer works at Bayside State Prison, he spoke to an employee at the facility on September 21, 2012, who told him the binder containing several months of recent time sheets was still in existence as of that date. As such, the Complainant concludes that he has been denied access to the records responsive to his request.⁶

Statement of Information:

On December 20, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on October 2, 2012, and that she responded to the request on October 15, 2012.⁷

The Custodian certifies that she asked the Bayside State Prison Unit Supervisor, Yolanda Garcia, for the requested records. The Custodian also certifies that on October 15, 2012, Ms. Garcia provided a copy of the daily/weekly sign-in sheet for the time period September 24, 2012 to September 28, 2012, and informed the Custodian that she did not retain any other sign-in sheets for August and September, 2012. The Custodian further certifies that Ms. Garcia told her that sign-in sheets prior to September 24, 2012, were not retained because the unit only retains sign-in sheets for approximately two weeks as a mechanism to verify employees’ time. The

⁶ The Complainant attached to the complaint, without further explanation, what appears to be the content portion of an e-mail from Yolanda Garcia to unknown persons dated July 10, 2012. The correspondence states in part: “[a]lthough we will be using the new ECATS shortly, please continue to sign in everyday on the daily sign in sheet...”

⁷ The evidence of record reveals the Custodian properly responded to the OPRA request in a timely manner on October 12, 2012, asking for an extension of time until October 15, 2012 to address the request.

Custodian certifies that she disclosed the sign-in sheet for the time period September 24, 2012 to September 28, 2012 in its entirety to the Complainant on October 15, 2012. The Custodian certifies that, other than the disclosed record, there are no records responsive to the Complainant's request.

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 custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Here the Custodian certified that, in an effort to address the Complainant's request, she asked Bayside State Prison Unit Supervisor Yolanda Garcia for the records responsive to said request. The Custodian certified that on October 15, 2012, Ms. Garcia provided the Custodian with one (1) record, a daily/weekly sign-in sheet for the time period September 24, 2012 to September 28, 2012, and informed the Custodian that she did not retain any other sign-in sheets for August and September, 2012. The evidence of record reveals the Custodian forwarded the requested record to the Complainant on the day she received it from Ms. Garcia, October 15, 2012, and informed the Complainant that there were no other records responsive to his request.

The Complainant offered evidence in his complaint that Bayside State Prison unit supervisors always retain three (3) months of time sheets in a binder. The Complainant's evidence, however, consisted of hearsay because his assertion that three (3) months of sign-in sheets were continuing to be maintained within a binder as of October 2, 2012, was based upon information provided to him by employees assigned to Bayside State Prison on that date. The Complainant's offered evidence is unconvincing. The Complainant argued that the copies of sign-in sheets he attached to the complaint support his claim that Bayside State Prison retained several months of sign-in sheets within the binder. However, the Complainant attached sign-in sheets for three (3) consecutive *weeks* in July 2012, not for several months. Moreover, even if Bayside State Prison at one time did retain several months of sign-in sheets in a binder, the facility may no longer follow that practice given Ms. Garcia's July 10, 2012 notice that the unit would soon be using the automated timekeeping program eCATS. Accordingly, because the Complainant's proffered evidence is not competent and/or not convincing, it is insufficient to

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.

overcome the Custodian's certification that the requested records, other than the one (1) disclosed record, are nonexistent.

Therefore, the Custodian did not unlawfully deny access to the records responsive to the request because the Custodian disclosed to the Complainant in a timely manner the daily/weekly sign-in sheet for the time period September 24, 2012 to September 28, 2012, and certified that no other records responsive to the request exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer, supra.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the records responsive to the request because the Custodian disclosed to the Complainant in a timely manner the daily/weekly sign-in sheet for the time period September 24, 2012 to September 28, 2012, and certified that no other records responsive to the request exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).*

Prepared By: John E. Stewart, Esq.

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

July 16, 2013