



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

December 20, 2013 Government Records Council Meeting

John Ciszewski
Complainant

Complaint No. 2013-136

v.

Town of Newton (Sussex)
Custodian of Record

At the December 20, 2013 public meeting, the Government Records Council (“Council”) considered the December 10, 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 notwithstanding the lack of a time frame required for the Complainant’s request to be a valid request for correspondence, the Custodian did not unlawfully deny access to same because she certified in the Statement of Information that she timely responded by providing the Complainant access to all responsive records, and there is no evidence to refute her certification. N.J.S.A. 47:1A-6; Cole v. Township of Montague (Sussex), GRC Complaint No. 2011-236 (December 2012).

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 20th Day of December, 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: December 23, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 20, 2013 Council Meeting**

**John Ciszewski¹
Complainant**

GRC Complaint No. 2013-136

v.

**Town of Newton (Sussex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of all records concerning the Complainant's letter to Mayor Elvidge dated May 31, 2010 (Certified No. 7008-1830-0004-9935-7013) including all records generated by this letter and all correspondence between and among the Newton Police Department ("NPD"), Darlene Cooper, NPD Custodian, Debra Carter, Human Resources ("HR") Coordinator; Lt. Robert Osborn, the Complainant and any other persons.

Custodian of Record: Lorraine Read

Request Received by Custodian: March 7, 2013

Response Made by Custodian: March 19, 2013

GRC Complaint Received: March 25, 2013

Background³

Request and Response:

On March 7, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On March 19, 2013, the Custodian responded in writing advising the Complainant that no correspondence directly related to the May 31, 2010 letter was located and that Mayor Elvidge did not recollect receiving the letter. The Custodian noted that she maintained copies of correspondence submitted by HR and the NPD related to the May 31, 2010 letter. The Custodian stated that although she believes the Complainant is already in possession of these records, she can e-mail same upon request.⁴

¹ No legal representation listed on record.

² Represented by Richard A. Stein, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ).

³ 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.

⁴ The Complainant received these records in response to another OPRA request for the same records submitted on March 20, 2013. The GRC notes that the Complainant did not identify this request as at issue here.

Denial of Access Complaint:

On March 25, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputes that the Custodian provided all responsive records. The Complainant requests that the GRC order disclosure of the correspondence “... contained in ...” his May 31, 2010 certified letter. The Complainant further contends that the Custodian did not address the portion of his request seeking “all ... records generated by this letter and all correspondence ...” between the NPD and HR and requests that the GRC require a response.

Statement of Information:

On June 26, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the OPRA request on March 7, 2013 and responded in writing on March 19, 2013.

The Custodian certifies that on June 1, 2010, the Complainant submitted an OPRA request to HR. The Custodian certifies that HR responded on June 7, 2010 providing a one (1) page record. The Custodian certifies that the request at issue appears to seek records relevant to that OPRA request. The Custodian certifies that the Clerk’s Office conducted a computer search and contacted Mayor Elvidge, who did not recollect receiving a certified letter from the Complainant. The Custodian certifies that the Clerk’s Office attempted to telephone the Complainant on March 18, 2013 but was unable to reach him. The Custodian certifies that the Town responded on March 19, 2013 advising that no correspondence existed. The Custodian certifies that three (3) pages of records exist and were provided to the Complainant on March 20, 2013 in response to a new OPRA request for the same records.

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.

The Complainant submitted an OPRA request on March 7, 2013 and the Custodian responded to same providing access to three (3) pages of records. However, the Complainant filed this complaint disputing that all records were provided and requesting that the Custodian be required to (1) provide the correspondence “... contained in ...” his May 31, 2010 certified letter; and (2) respond to the portion of the request seeking “... all records ... generated ...” by his letter.

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.

An examination of the evidence yields the following facts:

- The Complainant disputed that NPD could not locate his certified letter and the fact that same was not provided in response to his request.
- The Complainant disputed that the Custodian sufficiently responded to the second portion of his OPRA request.

The GRC is satisfied that no denial of access occurred here. First, the Complainant's original request sought documents "concerning" the certified letter, but not the actual letter. If the Complainant's intent was to seek a copy of the letter, his request did not clearly articulate this. Second, the Custodian provided three (3) pages of records reasonably determined to be responsive to the Complainant's overall request, which on its face lacks a definitive time frame necessary for same to be a valid request for correspondence under OPRA. See Armenti v. Robbinsville BOE (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). The GRC notes that the Custodian previously identified these records as responsive on March 19, 2013 and offered to provide same; however, the Complainant instead decided to submit a new request on March 20, 2013 for the same records and subsequently received same.

Ultimately, the evidence supports the Custodian's certification in the SOI that she located three (3) pages of records and could not locate any further records that may be reasonably responsive to the Complainant's request, and offered same to the Complainant. See Cole v. Township of Montague (Sussex), GRC Complaint No. 2011-236 (December 2012) at 4 (*citing* Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005) in holding that the custodian met her burden of proving that all records in existence were provided to the complainant and there is no credible evidence to refute said certification).

Thus, notwithstanding the lack of a time frame required for the Complainant's request to be a valid request for correspondence, the Custodian did not unlawfully deny access to same because she certified in the SOI that she timely responded by providing the Complainant access to all responsive records, and there is no evidence to refute her certification. N.J.S.A. 47:1A-6; Cole, GRC 2011-236.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that notwithstanding the lack of a time frame required for the Complainant's request to be a valid request for correspondence, the Custodian did not unlawfully deny access to same because she certified in the Statement of Information that she timely responded by providing the Complainant access to all responsive records, and there is no evidence to refute her certification. N.J.S.A. 47:1A-6; Cole v. Township of Montague (Sussex), GRC Complaint No. 2011-236 (December 2012).

Prepared By: Frank F. Caruso
Senior Case Manager

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

December 10, 2013