



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**

**January 28, 2014 Government Records Council Meeting**

Barbara Kulig  
Complainant

Complaint No. 2013-173

v.

Township of Deerfield (Cumberland)  
Custodian of Record

At the January 28, 2014 public meeting, the Government Records Council (“Council”) considered the January 21, 2014 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:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s May 17 and May 20, 2013 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian bore her burden that she timely responded to the Complainant’s May 30, 2013 OPRA request, stating that there were no responsive records and that Deerfield is not responsible for the content held by third party websites. N.J.S.A. 47:1A-6. As such, the Custodian denial of access was proper pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
3. Though untimely, the Custodian provided the Block and Lot numbers for the property at 773 Lebanon Road and provided the names of the owners of the property. Therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6.
4. The Custodian responded to the Complainant that there were no records responsive regarding the sale prices for the property at 773 Lebanon Road, and how many times it has been sold. In addition, the Custodian stated that Deerfield had no responsive



records at all regarding the property at 803 Lebanon Road, notwithstanding information the Complainant obtained from third parties. Such information is insufficient evidence to refute the Custodian's certification and therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

5. The Custodian responded to the Complainant on May 31, 2013 stating that Deerfield does not have a copy of the deed for the property at 773 Lebanon Road, which would have the Grantor/Grantee information the Complainant seeks. The Custodian also reiterated that she has no authority to speak on or change information on third party websites, and that Deerfield provides no information to those websites. Finally, the Custodian repeats that Deerfield has no responsive records pertaining to the address 803 Lebanon Road. Therefore, because there is insufficient evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
6. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian ultimately responded to the Complainant's requests stating that there were no other documents pertaining to the property at 773 Lebanon Road, and that there were no documents pertaining to the property at 803 Lebanon Road. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

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 28<sup>th</sup> Day of January, 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: January 30, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 28, 2014 Council Meeting**

**Barbara Kulig<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-173**

v.

**Township of Deerfield (Cumberland)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

May 17, 2013 and May 20, 2013 OPRA Request: Electronic copies of:

1. Block and Lot Numbers for 773 Lebanon Road, Millville, NJ 08332, and 803 Lebanon Road, Millville, NJ 08332.
2. Grantors and Grantees for 773 Lebanon Road, Millville, NJ 08332, and 803 Lebanon Road, Millville, NJ 08332.
3. Any Quit Claim Deeds now since 2003 for 773 Lebanon Road, Millville, NJ 08332, and 803 Lebanon Road, Millville, NJ 08332.
4. Sale prices for as many times each sold for 773 Lebanon Road, Millville, NJ 08332, and 803 Lebanon Road, Millville, NJ 08332.

May 30, 2013 OPRA Request: Electronic copies of:

1. Record of Grantor/Grantee of Block 76, Lot 5; 773 Lebanon Road, Millville, NJ 08332.
2. Records as to why the Grantor/Grantee has been off of the NJ/ACTB.org Deed site since July 2008 and require its return to NJ/ACTB.org.
3. Records as to why 803 Lebanon Road, Millville NJ 08332 is a non-existent current assessment record.

**Custodian of Record:** Karen Seifrit

**Request Received by Custodian:** May 17, 20, and 30, 2013

**Response Made by Custodian:** May 31, 2013

**GRC Complaint Received:** June 7, 2013

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Michael L. Testa, Esq., of Testa Heck Scrocca & Testa, P.A. (Vineland, NJ).

## **Background**<sup>3</sup>

### **Request and Response:**

On May 17, 2013, the Complainant submitted a common law request via email to the Custodian seeking the above-mentioned items.<sup>4</sup> On May 20, 2013, the Complainant submitted a second common law Open Public Records Act (“OPRA”) request via email seeking additional records in addition restating what she requested on May 17, 2013.<sup>5</sup> On May 30, 2013, eight (8) business days after receiving the May 17, 2013 OPRA request, and seven (7) business days after receiving the May 20, 2013 OPRA request, the Custodian responded in writing as follows:

- The Block and Lot for 773 Lebanon Road is Block 76, Lot 5.
- The owners of the [above-mentioned property are] John B. and Sophie Kulig.
- [The Twp. of Deerfield (“Deerfield”) has] no copies of any deeds for [the above-mentioned] property. There is no way to determine the sale price for as many times as this property may have been sold.
- With regard to 803 Lebanon Road – please be advised that this property does not exist in current assessment records. Therefore, [Deerfield has] no information as to Block and Lot, Grantor/Grantee. We have no deeds for this property or have information concerning sale price.
- If you want copies of Deeds you need to contact the Cumberland County Clerk’s Office.

On May 30, 2013, the Complainant clarified that she is looking for the Grantor/Grantee of Block 76, Lot 5, 773 Lebanon Road, Millville, NJ 08332, (“773 Lebanon Road”) and not the owners of the property. In addition, the Complainant requested further information on said property’s listing on NJ/ACTB.org (“ACTB”) an online database of property deeds. The Complainant then wanted records explaining why the property at 803 Lebanon Road, Millville, NJ 08332 (“803 Lebanon Road”) is a non-existent current assessment record when it allegedly appears on other websites such as the United States Postal Service (“USPS”) and Map Quest. Finally, the Complainant requested that her address information be disassociated from Block 76, Lot 5 from the ACTB website.

On May 31, 2013, the Custodian responded to the Complainant in writing stating that she does not have a copy of the Deed showing the Grantor/Grantee for Block 76, Lot 5. The Custodian referred the Complainant to the Cumberland County Clerk’s Office for a copy of the Deed. The Custodian then stated that the ACTB website is not under the control of Deerfield and that the Complainant should contact the website itself if she has concerns about its content. The

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<sup>3</sup> 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.

<sup>4</sup> Although not a formal OPRA request, the Custodian treated the letter as such.

<sup>5</sup> The May 20, 2013 OPRA request added requested Item No. 4, and expanded the search date under requested Item No. 3 from 2005 to 2003.

Custodian next reiterated that there are no responsive records regarding the property at 803 Lebanon Road. Finally, the Custodian stated again that she has no control over the content of third party websites such as ACTB, Map Quest, and the USPS.

#### Denial of Access Complaint:

On June 7, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). Regarding the property at 803 Lebanon Road, the Complainant asserts that because the address is listed on MapQuest, and was informed by the USPS that Deerfield would have an updated address listing, ergo Deerfield should have a record of the property’s existence. The Complainant argues these assertions contradict the Custodian’s claim that there is no information or records regarding the property located at the alleged 803 Lebanon Road address.

Regarding the property at 773 Lebanon Road, the Complainant states that she has not received the records requested. The Complainant argues that the Custodian gave her the names of the owners of the above-mentioned property, when she is seeking records on the Grantors Grantees.

#### Statement of Information:

On September 25, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she responded to the Complainant as best as she could, by providing the names of the owners of the property at 773 Lebanon Road as well as the block and lot numbers for same. The Custodian also certifies that there were no responsive records regarding the property located at the alleged 803 Lebanon Road address. The Custodian certifies that 803 Lebanon Road is not a property that exists in Deerfield’s current assessment records.

The Custodian finally certifies she is not responsible for the content of third party websites such as MapQuest and ACTB, and that the Complainant’s request to change content on those websites is invalid. The Custodian certifies that Deerfield does not send any information to these websites.

### Analysis

#### Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).<sup>6</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of

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<sup>6</sup> A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

On May 20, 2013, the Custodian attempted to send a response to the Complainant’s May 17, 2013 OPRA request. In her SOI, the Custodian explains that she inadvertently sent the response to Deerfield’s primary email address and not to the Complainant. The Custodian provides that she re-submitted or forwarded the response to the Complainant on May 30, 2013. Further, the Custodian states she sent a second response on May 31, 2013.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s May 17 and May 20, 2013 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC No. 2007-11.

However, the Custodian bore her burden that she timely responded to the Complainant’s May 30, 2013 OPRA request, stating that there were no responsive records and that Deerfield is not responsible for the content held by third party websites. N.J.S.A. 47:1A-6. As such, the Custodian denial of access was proper pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC No. 2007-11.

### **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 Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian’s certification. The Council subsequently determined that “[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access.” Id.

### May 17 and May 20, 2013 OPRA Requests

#### Item Request Nos. 1 and 2

Though untimely, the Custodian provided the Block and Lot numbers for the property at 773 Lebanon Road and provided the names of the owners of the property. Therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6.

#### Item Request Nos. 3 and 4

Though untimely, the Custodian responded to the Complainant that there were no records responsive regarding the sale prices for the property at 773 Lebanon Road, and how many times it has been sold. In addition, the Custodian stated that Deerfield had no responsive records at all regarding the property at 803 Lebanon Road, notwithstanding information the Complainant obtained from third parties. The Complainant does not provide sufficient evidence to refute the Custodian's certification and therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer, GRC No. 2005-49.

### May 30, 2013 OPRA Request Nos. 1, 2, and 3

The Custodian responded to the Complainant on May 31, 2013 stating that Deerfield does not have a copy of the deed for the property at 773 Lebanon Road, which would have the Grantor/Grantee information the Complainant seeks. The Custodian also reiterated that she has no authority to speak on or change information on third party websites, and that Deerfield provides no information to those websites. Finally, the Custodian repeats that Deerfield has no responsive records pertaining to the address 803 Lebanon Road. Therefore, because there is insufficient evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer, GRC No. 2005-49.

### **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “... [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had



some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian ultimately responded to the Complainant's requests stating that there were no other documents pertaining to the property at 773 Lebanon Road, and that there were no documents pertaining to the property at 803 Lebanon Road. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's May 17 and May 20, 2013 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian bore her burden that she timely responded to the Complainant's May 30, 2013 OPRA request, stating that there were no responsive records and that Deerfield is not responsible for the content held by third party websites. N.J.S.A. 47:1A-6. As such, the Custodian denial of access was proper pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
3. Though untimely, the Custodian provided the Block and Lot numbers for the property at 773 Lebanon Road and provided the names of the owners of the property. Therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6.
4. The Custodian responded to the Complainant that there were no records responsive regarding the sale prices for the property at 773 Lebanon Road, and how many times

it has been sold. In addition, the Custodian stated that Deerfield had no responsive records at all regarding the property at 803 Lebanon Road, notwithstanding information the Complainant obtained from third parties. Such information is insufficient evidence to refute the Custodian's certification and therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

5. The Custodian responded to the Complainant on May 31, 2013 stating that Deerfield does not have a copy of the deed for the property at 773 Lebanon Road, which would have the Grantor/Grantee information the Complainant seeks. The Custodian also reiterated that she has no authority to speak on or change information on third party websites, and that Deerfield provides no information to those websites. Finally, the Custodian repeats that Deerfield has no responsive records pertaining to the address 803 Lebanon Road. Therefore, because there is insufficient evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
6. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian ultimately responded to the Complainant's requests stating that there were no other documents pertaining to the property at 773 Lebanon Road, and that there were no documents pertaining to the property at 803 Lebanon Road. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado, Esq.  
Staff Attorney

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

January 21, 2014