



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**June 30, 2015 Government Records Council Meeting**

Frances Hall  
Complainant

Complaint No. 2013-209

v.

Township of Howell (Monmouth)  
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 2015 Supplemental 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 this complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on May 20, 2015, and further failed to submit to the GRC an explanation for her failure to appear, as provided by N.J.A.C. 1:1-18.4(a), within thirteen (13) days.

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 30<sup>th</sup> Day of June, 2015

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 2, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
June 30, 2015 Council Meeting**

**Frances Hall<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-209**

v.

**Township of Howell (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copy of the “Tax Search Export” file produced by the software system used in your tax collector’s office. This file contains taxes billed and collected data and is maintained in your tax collector’s office.

**Custodian of Record:** Susan C. Davison  
**Request Received by Custodian:** May 28, 2013  
**Response Made by Custodian:** May 28, 2013  
**GRC Complaint Received:** July 17, 2013

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

**March 25, 2014**

At the March 25, 2014, public meeting, the Government Records Council (“Council”) considered the March 18, 2014, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council therefore found that:

[T]he Council refer this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts of this complaint; specifically if the Township has the ability to create a TSE file with its own software system and in turn can provide the requested record or if the installation of software by a third party is necessary for the Township to gain access to the requested record. Furthermore, it is unclear as to what type of access is granted to third parties by obtaining a “global PIN” number for the Township’s software. Additionally, this complaint should be referred to the OAL to determine whether the Custodian knowingly and willfully

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

<sup>2</sup> Represented by McKenna G. Kingdon, Esq. (Howell, NJ).

<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.

violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Procedural History**

On March 26, 2014, the Council distributed its Interim Order (“Order”) to the parties. On February 9, 2015, the GRC transmitted the Complaint to the Office of Administrative (“OAL”). On June 3, 2015, OAL transmitted the Complaint back to the GRC because the Complainant failed to appear for a scheduled hearing on May 20, 2015. The Complainant failed to submit to the GRC an explanation for her failure to appear, as provided by N.J.A.C. 1:1-18.4(a), within thirteen (13) days.

### **Analysis**

No analysis required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on May 20, 2015, and further failed to submit to the GRC an explanation for her failure to appear, as provided by N.J.A.C. 1:1-18.4(a), within thirteen (13) days.

Prepared By: Samuel A. Rosado  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

June 23, 2015



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*

**INTERIM ORDER**

**March 25, 2014 Government Records Council Meeting**

Francis Hall  
Complainant

Complaint No. 2013-209

v.

Township of Howell (Monmouth)  
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council (“Council”) considered the March 18, 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 it refers this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts of this complaint; specifically if the Township has the ability to create a TSE file with its own software system and in turn can provide the requested record or if the installation of software by a third party is necessary for the Township to gain access to the requested record. Furthermore, it is unclear as to what type of access is granted to third parties by obtaining a “global PIN” number for the Township’s software. Additionally, this complaint should be referred to the OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of March, 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: March 26, 2014**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 25, 2014 Council Meeting**

**Francis Hall<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-209**

**v.**

**Township of Howell (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copy of the “Tax Search Export” file produced by the software system used in your tax collector’s office. This file contains taxes billed and collected data and is maintained in your tax collector’s office.

**Custodian of Record:** Susan C. Davison  
**Request Received by Custodian:** May 28, 2013  
**Response Made by Custodian:** May 28, 2013  
**GRC Complaint Received:** July 17, 2013

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

**Request and Response:**

On May 28, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing stating that there is a special charge to obtain access to those records, and provided a copy of Township of Howell’s (“Howell”) ordinance 139-8 that detailed the fees associated with gaining access to the requested records.

**Denial of Access Complaint:**

On July 17, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that she was told that there was an annual charge of \$1,500 to have these records sent electronically to her on a weekly basis. The Complainant claims that she was informed by other Tax Collectors that it should only take five (5) minutes to prepare and send these records electronically.

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

<sup>2</sup> Represented by McKenna G. Kingdon, Esq. (Howell, NJ).

<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.

### Statement of Information:

On July 29, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that the Complainant’s request for a “tax search export” (“TSE”) file is not available to her on Howell’s current software system. The Custodian provides that an export file requested by the Complainant is produced by third party software provided and maintained from private vendors who pay an annual charge for access to tax records. The Custodian certifies that she, as Howell’s Tax and Utility Collector, does not have access to the TSE file that third party software creates, and the software is separate and unrelated from the “United Computer Software” program utilized by Howell.

In her response to the Complainant, the Custodian provided a copy of Township Ordinance 139-8, which provides:

- A. In lieu of other imposition of copy fees, pursuant to schedules of fees as permitted by state law, for day by day requests for companies such as title search companies, the Tax Collector’s office may make available an online look-up system whereby users shall have one-year access after being issued a global PIN number or, alternatively, the user will be permitted to install a software package providing for automatic file transfer service.
- B. The cost of said services offered by the Tax Collector shall be \$1,500 per year for global PIN access or \$1,500 plus the cost of installation of a software package, preapproved by the Township for security purposes, for the aforescribed automatic file transfer service.
- C. The purpose of this section is the more effective use of Township manpower by replacing, when possible, current labor intensive requirements of personal review of requests for information and providing print-out materials at the rate of \$0.05 per page for letter-sized pages and smaller; \$0.07 per page for legal-sized pages and larger; where the actual costs to produce paper copies exceed the rates of \$0.05 and \$0.07, may charge the actual cost of duplication thereafter by utilizing the electronic database at a fixed rate without the attendant labor costs, in compliance with OPRA requests.

[Amended 4-6-2010 br Ord. No. 0-10-07; 1-18-2011 by Ord. No. 0-11-01]

### Additional Submissions

On January 31, 2014, the GRC delivered a letter to the Custodian requesting additional information. On February 5, 2013, the Custodian responded in writing to the GRC’s inquiries as follows:

1. Does the Tax Collector have access to the Township’s tax records from within its own “United Computer Software” system?  
**Yes.**
2. Does the Tax Collector have the ability to create a “Tax Search Export” file from within its own “United Computer Software” system?

**No, the search module available to me is for individual properties – one at a time.**

3. If “yes” to question two (2) above, how long would it take the Tax Collector to compile and create the “Tax Search Export” file?

**N/A**

4. Besides DataTrace/Signature, how many other vendors have purchased access to the Township’s tax records in accordance with Township Ordinance 139-8?

**Other vendors have purchased the right to pin numbers but not the file system. There were 3 but they no longer purchase the pin number.**

5. Does the Township charge the \$1,500 annual fee in accordance with Township Ordinance 139-8 to anyone seeking access to tax records pursuant to OPRA?

**Most OPRA requests received are for an individual property and are charged according to guideline. Datatrace continues to pay \$1,500.**

### Analysis

#### 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.

Furthermore, “OPRA states that if the GRC is unable to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, the [GRC] shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a state agency in contested cases under the Administrative Procedures Act.” N.J.S.A. 47:1A-7(e). Moreover, the Administrative Procedure Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a).

A determination of whether the records at issue here can be accessed electronically by the Township’s own software is integral to whether its assertion that the records are not available is accurate.

Based on the evidence of record, there are contested facts regarding the existence and availability of the responsive records electronically. In response to a GRC request for additional information, the Custodian certified that the Township’s own software does not have the ability to create a TSE file, and that third parties pay \$1,500 annually to install its own software that automatically creates and transmits a TSE file to them. In contrast, the Complainant, upon information and belief, contends that creating a TSE file should be a routine and common ability among townships’ database software, and would not require additional software to create one. Thus, the GRC is not satisfied that the evidence supports that the Township cannot create a TSE file without additional software and thus does not have the record requested. Based on the forgoing, a fact-finding hearing will be necessary to develop the record.

Therefore, the Council should refer this matter to the OAL for a hearing to resolve the facts of this complaint; specifically if the Township has the ability to create a TSE file with its own software system and in turn can provide the requested record, or if the installation of software by a third party is necessary for the Township to gain access to the requested record. Furthermore, it is unclear as to what type of access is granted to third parties by obtaining a “global PIN” number for the Township’s software. Additionally, this complaint should be referred to the OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council refer this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts of this complaint; specifically if the Township has the ability to create a TSE file with its own software system and in turn can provide the requested record or if the installation of software by a third party is necessary for the Township to gain access to the requested record. Furthermore, it is unclear as to what type of access is granted to third parties by obtaining a “global PIN” number for the Township’s software. Additionally, this complaint should be referred to the OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

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

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

March 18, 2014