



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

October 27, 2015 Government Records Council Meeting

June Maxam (dba The North County Gazette)
Complainant

Complaint No. 2013-285

v.

Bloomfield Township Department of Health
& Human Services (Essex)
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 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 October 1, 2015, and further failed to submit to the GRC an explanation for her failure to appear 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 27th Day of October, 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: October 29, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting**

**June Maxam (dba The North Country Gazette)¹
Complainant**

GRC Complaint No. 2013-285

v.

**Bloomfield Township Department of Health & Human Services (Essex)²
Custodial Agency**

Records Relevant to Complaint: “Copy of all agreements and or communications received by the BOH issued by the current caretaker of Memphis between the period of Sept. 1, 2012 to date and all agreements and communication received by the BOH for the same period issued by NTNN.”³

Custodian of Record: Karen Lore

Request Received by Custodian: August 2, 2013

Response Made by Custodian: August 13, 2013

GRC Complaint Received: September 24, 2013, amended October 3, 2013

Background

September 30, 2014 Council Meeting:

At its September 30, 2014, public meeting, the Government Records Council (“Council”) considered the September 23, 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, found that based on the insufficient and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On October 1, 2014, the Council distributed its September 30, 2014, Interim Order to all parties. On February 10, 2015, the GRC transmitted the Complaint to the Office of

¹ No legal representation listed on record.

² Represented by Ronald J. Ricci, Esq., of Ricci & Fava, L.L.C. (Woodland Park, NJ).

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

June Maxam (dba The North Country Gazette) v. Bloomfield Township Department of Health & Human Services (Essex), 2013-285 – Supplemental Findings and Recommendations of the Executive Director

Administrative (“OAL”). On October 5, 2015, OAL transmitted the Complaint back to the GRC because the Complainant failed to appear for a scheduled hearing on October 1, 2015. By notice dated October 5, 2015, OAL informed the Complainant that if she still wanted a hearing she must submit to the GRC an explanation for her failure to appear within thirteen (13) days of said notice. As of this writing, the Complainant failed to submit to the GRC an explanation for her failure to appear in a timely manner.

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 October 1, 2015, and further failed to submit to the GRC an explanation for her failure to appear within thirteen (13) days.

Prepared By: John E. Stewart

Reviewed By: Joseph Glover
Executive Director

October 20, 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

September 30, 2014 Government Records Council Meeting

June Maxam (dba The North Country Gazette)
Complainant

Complaint No.
2013-285

v.

Bloomfield Township Department of Health & Human Services (Essex)
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 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 based on the insufficient and conflicting evidence in this matter; the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official 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 30th Day of September, 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: October 1, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 30, 2014 Council Meeting**

**June Maxam (dba The North Country Gazette)¹
Complainant**

GRC Complaint No. 2013-285

v.

**Bloomfield Township Department of Health & Human Services (Essex)²
Custodial Agency**

Records Relevant to Complaint: “Copy of all agreements and or communications received by the BOH issued by the current caretaker of Memphis between the period of Sept. 1, 2012 to date and all agreements and communication received by the BOH for the same period issued by NTNN.”³

Custodian of Record: Karen Lore

Request Received by Custodian: August 2, 2013

Response Made by Custodian: August 13, 2013

GRC Complaint Received: September 24, 2013, amended October 3, 2013

Background⁴

Request and Response:

On August 2, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 13, 2013, the seventh (7th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the records responsive to request items numbered 5 through 7, totaling thirteen (13) pages, are being disclosed in their entirety and that said records are the only records responsive to the Complainant’s request.

Denial of Access Complaint:

On September 24, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that on August 2, 2013, she submitted an OPRA request to the Bloomfield Board of Health/Health Department seeking eight

¹ No legal representation listed on record.

² Represented by Ronald J. Ricci, Esq., of Ricci & Fava, L.L.C. (Woodland Park, NJ).

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.

June Maxam (dba The North Country Gazette) v. Bloomfield Township Department of Health & Human Services (Essex), 2013-285 – Findings and Recommendations of the Executive Director

(8) request items. The Complainant further states that on August 13, 2013, she was denied access to request item numbers 4, 5 and 6 which sought the following records:

- “4. According to the Dec. 20, 2012 minutes of the BOH, in a resolution of the BOH it is stated that ‘the Board has also reached an agreement with the current caretaker of Memphis.....’ Please provide a copy of that agreement referenced received by the BOH from the current caretaker of Memphis.”
- “5. Copy of all agreements and or communications received by the BOH issued by the current caretaker of Memphis between the period of Sept. 1, 2012 to date and all agreements and communication received by the BOH for the same period issued by NTNN.”
- “6. Copy of transfer of ownership agreement/adoption agreement transferring OWNERSHIP of property known as Memphis from the town animal shelter/BOH to NTNN or anyone else.”

The Complainant states that the Custodian denied the records for request item number 4 by informing the Complainant that there was “no document pursuant to this request.” The Complainant further states that the Custodian denied the records for request item number 5 by informing the Complainant that the only records responsive to said request item were disclosed in response to request item number 6. The Complainant states that the Custodian denied the records for request item number 6 because the records disclosed were not responsive to the request.

The Complainant states that she knows the Custodian denied her access to responsive records because the Complainant filed an OPRA request on September 3, 2013 seeking a copy of a letter dated September 3, 2013 from Ronald J. Ricci, Esq. to Brian Aloia, Esq. which enclosed a copy of a December 20, 2012 resolution of the Board of Health containing an enclosure consisting of a one page letter dated January 2013 and signed by the purported caretaker. The Complainant attaches a copy of the letter and enclosure to her complaint and states that the letter “clearly indicates that Karen Lore lied and withheld public records in her response of Aug. 13, 2013.”

On October 3, 2013, the Complainant submitted an Amended Denial of Access Complaint to the GRC. The Complainant amends her September 24, 2013 complaint by eliminating request items numbered 4 and 6, and seeking only the records denied in response to request item number 5. The Complainant also states that she learned from an interview given by Ronald J. Ricci, Esq. to the Independent Press that the Custodian withheld other communications that were responsive to the Complainant’s August 3, 2013 OPRA request. Specifically, the Complainant states that the Custodian failed to disclose a February 11, 2013 communication to the Board of Health/Health Department/Jeff Coltenback which the Complainant states Mr. Ricci disclosed to reporter Daniel Jackovino for an article which subsequently appeared on September 13, 2013. The Complainant attaches to the Amended Denial of Access Complaint a copy of a

letter to Jeff Coltenback, copying Mr. Ricci, from an unknown sender.⁵ The letter is captioned “JEFF LETTER” and the subject is “Memphis update.”

Statement of Information:

On October 18, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies she received the Complainant’s OPRA request on August 2, 2013, and responded to the request on August 13, 2013. The Custodian addressed all eight (8) of the Complainant’s request items in the SOI; however, the GRC will only consider the Custodian’s response to request item number 5 because that is the only request item containing records relevant to the complaint.

The Custodian certifies that an agreement was determined to be responsive to the request and was disclosed to the Complainant on August 13, 2013. The Custodian attaches an agreement dated September 20, 2012 to the complaint. The Custodian certifies that she did not have any other records responsive to the Complainant’s request on the date of the request. The Custodian’s Counsel certifies that on September 3, 2013, he received a record from the Neighbor to Neighbor Network, which he faxed to the Custodian on September 6, 2013.⁶ Counsel certifies that the record was not received by him or the Board of Health until after the Complainant’s OPRA request was received.

Additional Submissions:

On October 21, 2013, the Complainant submitted a one hundred twenty-three (123) paragraph affidavit in which she states that she challenges the truthfulness of the certifications made by both the Custodian and the Custodian’s Counsel contained in the SOI. The Complainant states that the Custodian is also the president of the Neighbor to Neighbor Network, and the gravamen of her affidavit is that the Custodian knew, or should have known, responsive records existed but that she unlawfully denied the Complainant access to those records, and as such the Complainant asserts that the Custodian and Custodian’s Counsel “intentionally, knowingly, and willfully made false written sworn statements” in the SOI.

Analysis

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 Custodian submitted a Statement of Information wherein she and the Custodian’s Counsel certified that requested records were not in the agency’s possession at the time of the request and therefore could not be disclosed. The Complainant submitted an affidavit

⁵ The sender’s name has been redacted.

⁶ Although Counsel did not certify that this record was responsive to the Complainant’s request, it appears in the context of the certification that it would have been a record responsive to the Complainant’s OPRA request. *June Maxam (dba The North Country Gazette) v. Bloomfield Township Department of Health & Human Services (Essex)*, 2013-285 – Findings and Recommendations of the Executive Director

wherein she swore upon information and belief that the Custodian and the Custodian's Counsel falsified their certifications; however, the Complainant did not provide a foundation for such "information and belief."

Accordingly, based on the insufficient and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official 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 find that based on the insufficient and conflicting evidence in this matter; the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: John E. Stewart, Esq.

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

September 23, 2013