



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

FINAL DECISION

June 24, 2014 Government Records Council Meeting

Robert Moss
Complainant

Complaint No. 2013-300

v.

Ocean County College
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the June 17, 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 the Custodian has met her burden of proof that she did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The Custodian certified that no responsive records exist, and there is no credible evidence in the record to refute the Custodian’s certification. Pusterhofer v. N.J. Dep’t of Educ., 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 24th Day of June, 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: June 26, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 24, 2014 Council Meeting**

**Robert Moss¹
Complainant**

GRC Complaint No. 2013-300

v.

**Ocean County College²
Custodial Agency**

Records Relevant to Complaint: Any records of public meetings discussing the proposed west driveway, as mentioned in the 2008 Facilities Master Plan, pp. 11-12. Transcripts or summaries, if no transcript available.

Custodian of Record: Sara Winchester

Request Received by Custodian: September 18, 2013

Response Made by Custodian: September 24, 2013; October 3, 2014

GRC Complaint Received: October 15, 2013

Background³

Request and Response:

On September 18, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 24, 2013, four (4) business days later, the Custodian responded in writing, via email, denying the request as overly broad, and for failing to identify specific government records. In addition, the Custodian denied the request because it required her to conduct research.

On September 25, 2013, the Complainant sent an email to the Custodian, clarifying that he was seeking records of public meetings referenced within the “Facilities Master Plan,” not records of public meetings that explicitly mention the “Facilities Master Plan.” On September 26, 2013, the Custodian responded that after a preliminary search, no responsive documents existed. However, the Custodian added that since the Complainant seeks records from five (5) years ago, she needed more time to conduct the search. The Custodian stated that she would complete the search and respond by October 11, 2013.

¹ No legal representation listed on record.

² Represented by Mathew B. Thompson, Esq., of Berry, Sahradnik, Kotzas, & Benson (Toms River, 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.

On October 3, 2013, the Custodian responded to the Complainant, in writing, stating that no responsive records exist.

Denial of Access Complaint:

On October 15, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian provided an insufficient explanation as to why there were no responsive records to his OPRA request, and the response lacks credibility overall.

Statement of Information:

On October 22, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that upon receiving the Custodian’s September 25, 2013 letter, she reached out to individuals who may possess responsive documents. The Custodian also certified that she conducted a search of Ocean County College’s (“College”) archives, as the records sought are likely from in or around 2008.

The Custodian certified, after reaching out to other agency managers, that she was advised that that the College never held any meetings with the public regarding the proposed “west driveway.” She also certified that Ocean County Engineering (“OCE”) is the agency in charge of the proposed “west driveway.” In addition, the Custodian certified that OCE handled matters, with other county agencies and the public, regarding the project. Finally, the Custodian certifies she informed the Complainant of this information on October 3, 2013, with the intention of guiding the Complainant to the proper records custodian.

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.

In Pusterhofer v. N.J. 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.

In the instant matter, the Custodian initially responded, in writing, denying the

Complainant's OPRA request as overly broad, for failing to identify specific government records, and for requiring her to conduct research. Upon receiving the Complainant's September 25, 2013 clarification, the Custodian conducted another search for responsive documents. On October 3, 2013, the Custodian responded, in writing, that no responsive documents existed.

Similar to Pusterhofer, the Custodian certified in her SOI that no responsive records exist. GRC No. 2005-49. Additionally, the Complainant offered no credible evidence to refute the Custodian certification. Id. Finally, the Custodian certified that she informed the Complainant that a separate agency handled the subject of the Complainant's request.

Therefore, the Custodian has met her burden of proof that she did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The Custodian certified that no responsive records exist, and there is no credible evidence in the record to refute the Custodian's certification. Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has met her burden of proof that she did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The Custodian certified that no responsive records exist, and there is no credible evidence in the record to refute the Custodian's certification. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

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

Approved By: Dawn SanFilippo, Esq.
Acting Executive Director

June 17, 2014