



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

October 28, 2014 Government Records Council Meeting

June Maxam (dba The North Country Gazette)
Complainant

Complaint No. 2013-302

v.

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

At the October 28, 2014 public meeting, the Government Records Council (“Council”) considered the October 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. Because the Complainant was not the requestor of the records relevant to the complaint in the September 10, 2013 request, and the Complainant is not the requestor’s legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records; therefore this portion of the complaint is materially defective and must be dismissed. N.J.S.A. 47:1A-6.
2. Because the Custodian disclosed to the Complainant all records responsive to the Complainant’s combined request items numbered 10 and 15, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-1.

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 28th Day of October, 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 30, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

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

GRC Complaint No. 2013-302

v.

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

Records Relevant to Complaint:

Request submitted by Jeff Coltenback dated September 10, 2013:

Copies of emails sent and/or received between July 24, 2012 and September 9, 2013 by Karen Lore (klore@bloomfieldtwpnj.com) to/from the following email addresses:

Email #1 – karenlore4@hotmail.com

Email #2 – rricci@riccifavalaw.com

Email #3 – jeff@paradisepet.net

Email #4 – brian@aloialawfirm.com

Subject Matter/Content/Key Words (separated by colons): All Agreements/Contracts for animal shelter animals training or relocation: Jeff Coltenback: Jim Crosby: BrianAloia: Ronald Ricci: Memphis the pit bull: Memphis: Memphis the dog: Transporting animals out of state – specifically all NJ State health certificates obtained by the Bloomfield Health Dept. within the above time period to legally transport a dog to certain states within the USA: South Dakota: Kathleen Georgevich (spelling?): Andrea Kilkenny (spelling?): Autonomy:

Request dated Sunday, September 22, 2013:

Copies of all emails between Karen Lore and Brian Aloia pertaining to Memphis for the period July 1, 2012 to September 22, 2013, and copies of all emails between Karen Lore and Michael Fitzpatrick pertaining to Memphis for the period July 15, 2012 to September 22, 2013.³

Custodian of Record: Karen Lore

Complainant's Request Received by Custodian: September 23, 2013

Response Made by Custodian to the Complainant's Request: September 26, 2013

GRC Complaint Received: October 15, 2013

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.

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Background⁴

Request and Response:

On September 22, 2013, the Complainant submitted an OPRA request to the Custodian seeking eighteen (18) request items.⁵ The Custodian received the request on September 23, 2013. On September 26, 2013, the third (3rd) business day following receipt of said request, the Custodian responded in writing requesting an extension of time until October 11, 2013, in order to address the request. On October 11, 2013, the Custodian disclosed one hundred twenty-nine (129) pages of records determined to be responsive to the Complainant's request.

Denial of Access Complaint:

On October 15, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that on September 23, 2013, she submitted an OPRA request to the Custodian, and that on October 11, 2013, the Custodian responded to the request.

At the outset, the Complainant states, "[m]y complaint involves two separate denials of access and two individuals. The first denial of access involves an OPRA request filed on Sept. 10, 2013 by Jeff Coltenback to records custodian JoAnn Bruno..."⁶

The Complainant asserts that the Custodian willfully withheld emails responsive to Mr. Coltenback's September 10, 2013 request by informing the requestor that there were "no e-mails pursuant to the request." The Complainant states that she has attached to the complaint copies of e-mails that are responsive to the request to prove that there were responsive records.

The Complainant also asserts that the Custodian failed to disclose all of the e-mails responsive to request items numbered 10 and 15 of her September 23, 2013 request (dated September 22, 2013), which sought the following records:

- "10. Copies of all emails between Karen Lore and Michael Fitzpatrick pertaining to Memphis for the period of July 15, 2012 to [September 22, 2013]."⁷

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.

⁵ Request item number 18 was submitted to the Custodian via a separate e-mail.

⁶ The Complainant attached to the complaint copies of two (2) OPRA requests from Jeff Coltenback to JoAnn Bruno at Bloomfield Township. One request was dated September 9, 2013. The other request was dated September 10, 2013, and was a clarification of the September 9, 2013 request. Mr. Coltenback clarified the request at the behest of the Township. The clarified request dated September 10, 2013, is the request which, in part, formed the basis of this complaint.

⁷ The Complainant failed to list request item number 10 separately in the "Records Denied List" section of the complaint; however, she did state that those records were denied within the narrative contained in the "Detail Summary." Accordingly, the GRC will analyze request items numbered 10 and 15 together.

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- “15. Copies of all emails between Karen Lore and Brian Aloia pertaining to Memphis for the period of July 1, 2012 to [September 22, 2013].”

The Complainant states that according to the e-mails provided by Michael Fitzpatrick in response to the Complainant’s request, the Custodian “intentionally failed to disclose numerous emails between [the Custodian] and Fitzpartick and Aloia on which Jeff Coltenback was either the sender or copied.” The Complainant further states that the Custodian’s October 11, 2013 response denied the requested e-mails between Karen Lore and Brian Aloia.

The Complainant attached to her complaint one hundred ninety-nine (199) pages of documentation.

Statement of Information:

On November 5, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on September 23, 2013, and responded to the request on September 26, 2013, informing the Complainant that the Custodian needed an extension of time until October 11, 2013 to address the request. The Custodian certifies that on September 30, 2013, she asked the Complainant to clarify the request and the Complainant replied on that same date with a clarification.

With respect to Jeff Coltenback’s request dated September 10, 2013, the Custodian certifies that, to the best of her knowledge, the Complainant is not Mr. Coltenback’s legal representative; therefore, the Complainant does not have legal standing to file a complaint on behalf of Mr. Coltenback . The Custodian states that, because the Complainant does not have standing, this portion of the complaint should be dismissed.

Regarding the Complainant’s September 22, 2013 request, the Custodian certifies that the request is not for specific documents, but rather for a list of documents that may or may not exist. Nonetheless, the Custodian certifies that all of the records requested by the Complainant were provided to her. The Custodian contends that, despite the Complainant’s allegations to the contrary, the agency complies with all provisions for records retention pursuant to the retention schedules disseminated by DARM.⁸

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.

⁸ DARM is now the Division of Revenue and Enterprise Services - Records Management Services in the Department of the Treasury.
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Request submitted by Jeff Coltenback dated September 10, 2013

OPRA provides that “[a] person who is denied access to a government record by the custodian of the record...may...file a complaint with the Government Records Council...[t]he right to institute any proceeding under this section shall be solely that of the requestor.” N.J.S.A. 47:1A-6.

Here, the Complainant alleged that the Custodian unlawfully denied the requestor, Jeff Coltenback, records that he requested on September 10, 2013. There is nothing in the evidence of record to indicate that the Complainant is an attorney licensed to practice in the State of New Jersey and to serve as Jeff Coltenback’s legal representative. It is clear under OPRA that only a requestor who was denied access to a government record has standing to pursue an action for unlawful denial of access.

Accordingly, because the Complainant was not the requestor of the records relevant to the complaint in the September 10, 2013 request, and the Complainant is not the requestor’s legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records; therefore this portion of the complaint is materially defective and must be dismissed. N.J.S.A. 47:1A-6.

Request dated September 22, 2013

The records responsive to the request are (1) all e-mails from Karen Lore to Brian Aloia and from Brian Aloia to Karen Lore pertaining to Memphis for the period July 1, 2012 to September 22, 2013, and (2) all e-mails from Karen Lore to Michael Fitzpatrick and from Michael Fitzpatrick to Karen Lore pertaining to Memphis for the period July 15, 2012 to September 22, 2013.⁹

The Custodian certified that she disclosed to the Complainant all responsive e-mails except for one (1) e-mail dated August 29, 2013, from Karen Lore to members of the Board of Health. The Custodian certified that said e-mail is exempt pursuant to OPRA as a communication between a public agency and its insurance carrier, administrative service organization or risk management office.¹⁰ Conversely, the Complainant stated that the Custodian failed to disclose all of the e-mails responsive to combined request items numbered 10 and 15.

The GRC reviewed the one hundred ninety-nine (199) pages of documentation the Complainant attached to the complaint vis-à-vis the one hundred twenty-nine (129) pages of records the Custodian disclosed to the Complainant in order to determine specifically which records were responsive to request items numbered 10 and 15. The twenty-eight (28) e-mails set forth in the following table were determined by the GRC to be responsive to those request items:

⁹ Memphis is the name of a dog.

¹⁰ It is unnecessary for the Council to order an *in camera* examination of the withheld e-mail because said e-mail is not a record responsive to the request.

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NO.	FROM	TO	DATE	TIME
1	Karen Lore	Brian Aloia	07/18/12	4:23 p.m.
2	Karen Lore	Brian Aloia	07/20/12	1:06 p.m.
3	Karen Lore	Michael Fitzpatrick	07/20/12	1:17 p.m.
4	Karen Lore	Michael Fitzpatrick	07/24/12	10:33 a.m.
5	Karen Lore	Michael Fitzpatrick	07/30/12	10:01 a.m.
6	Karen Lore	Brian Aloia	07/30/12	4:37 p.m.
7	Karen Lore	Michael Fitzpatrick	07/31/12	1:21 p.m.
8	Karen Lore	Michael Fitzpatrick	08/01/12	9:29 a.m.
9	Michael Fitzpatrick	Karen Lore	08/03/12	8:31 a.m.
10	Karen Lore	Michael Fitzpatrick	08/06/12	9:44 a.m.
11	Karen Lore	Michael Fitzpatrick	08/06/12	12:02 p.m.
12	Brian Aloia	Karen Lore	08/06/12	2:12 p.m.
13	Karen Lore	Michael Fitzpatrick	08/06/12	2:27 p.m.
14	Karen Lore	Michael Fitzpatrick	08/09/12	9:48 a.m.
15	Karen Lore	Michael Fitzpatrick	08/10/12	11:13 a.m.
16	Karen Lore	Brian Aloia	08/11/12	7:45 a.m.
17	Karen Lore	Brian Aloia	08/14/12	7:59 a.m.
18	Karen Lore	Michael Fitzpatrick	09/04/12	3:05 p.m.
19	Karen Lore	Michael Fitzpatrick	09/07/12	9:30 a.m.
20	Karen Lore	Michael Fitzpatrick	09/07/12	11:28 a.m.
21	Karen Lore	Michael Fitzpatrick	09/07/12	11:34 a.m.
22	Karen Lore	Michael Fitzpatrick	09/14/12	2:15 p.m.
23	Brian Aloia	Karen Lore	09/18/12	11:02 a.m.
24	Karen Lore	Michael Fitzpatrick	10/15/12	10:10 a.m.
25	Michael Fitzpatrick	Karen Lore	10/15/12	4:47 p.m.
26	Michael Fitzpatrick	Karen Lore	10/18/12	10:42 a.m.
27	Karen Lore	Michael Fitzpatrick	10/19/12	9:42 a.m.
28	Karen Lore	Michael Fitzpatrick	08/22/13	2:40 p.m.

The GRC found that, contrary to the Complainant's allegations, the Custodian did not fail to disclose to the Complainant any e-mail determined to be responsive to the request items.

Accordingly, because the Custodian disclosed to the Complainant all records responsive to the Complainant's combined request items numbered 10 and 15, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-1.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant was not the requestor of the records relevant to the complaint in the September 10, 2013 request, and the Complainant is not the requestor's legal representative, the Complainant has no standing to pursue an action

for unlawful denial of access to said records; therefore this portion of the complaint is materially defective and must be dismissed. N.J.S.A. 47:1A-6.

2. Because the Custodian disclosed to the Complainant all records responsive to the Complainant's combined request items numbered 10 and 15, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-1.

Prepared By: John E. Stewart, Esq.

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

October 21, 2014