



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

Angel L. Vargas (On behalf of Essex County
Latino American Chamber of Commerce)
Complainant

Complaint No.2013-304

v.
City of Newark (Essex)
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the June 17, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian has borne his burden of proving that he did not unlawfully deny access to the requested documents because he certified that he timely provided all responsive documents to the Complainant, and the Complainant did not provide competent, credible evidence contrary to the Custodian’s certifications. Kohn v. Township of Livingston (Essex), GRC Complaint No. 2011-327 (February 2013).

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**

**Angel L. Vargas (on behalf of Essex County
Latino American Chamber of Commerce)¹
Complainant**

Complaint No. 2013-304

v.

**City of Newark (Essex)²
Custodial Agency**

Records Relevant to Complaint: The “Monthly Construction and Minority Contractors’ and Sub-Contractors’ Reports from June to October for the Marriot Hotel Broad St. Tucker Development.”

Custodian of Record: Robert P. Marasco
Request Received by Custodian: November 20, 2012
Response Made by Custodian: November 30, 2012
GRC Complaint Received: October 16, 2013

Background³

Request and Response:

On November 20, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 30, 2013, the Custodian contacted the Complainant to inform him that the documents were available, and the Complainant picked up the requested documents.

Denial of Access Complaint:

On October 16, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that portions of the documents he received were blurred and/or omitted by the Office of Affirmative Action and the Custodian.

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Statement of Information:

On December 12, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on November 20, 2012, and that the Complainant picked up the responsive documents on November 30, 2012. The Custodian further certifies that all responsive records, consisting of an Office of Affirmative Action Developers Compliance Tax Abated Projects Minority Business Enterprise Participation Summary Report (“OAA Summary Report”) for June 1, 2012 to October 31, 2012, an Affirmative Action Status Report (“Status Report”), and an Affirmative Action Final Report (“Final Report”), were provided to the Complainant. The Custodian states that communications with the Complainant subsequent to the filing of his complaint indicate that he believes that the documents he received from the Office of Affirmative Action were purposefully omitted and blurred.

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.

Here, the Custodian certified that all responsive documents were timely provided to the Complainant. These documents, included with the SOI, are not redacted or blurred. The OAA Summary report, on its face, represents statistics for June 1, 2012 to October 31, 2012. The Status Report and Final Report both list “Courtyard by Marriot” and “Tucker Development” as the project and developer name, respectively. The Complainant, in turn, has failed to submit sufficient evidence to refute the Custodian’s certification. *See Kohn v. Twp. of Livingston (Essex)*, GRC Complaint No. 2011-327 (February 2013). Rather, the Denial of Access Complaint states, contrary to the records request form originally provided to the City of Newark, that the Complainant sought reports dating from June 2011. Similarly, the copy of the original request form attached to the complaint has clearly been altered to read “for the Marriot Hotel *and the Panasonic Site*,” instead of “Marriot Hotel Broad St. Tucker Development.” (Emphasis added). The Complainant did not provide any copies of the allegedly blurred or unresponsive documents that he received on November 30, 2012.

Therefore, the Custodian has borne his burden of proving that he did not unlawfully deny access to the requested documents because he certified that he timely provided all responsive documents to the Complainant, and the Complainant did not provide competent, credible evidence contrary to the Custodian’s certifications. N.J.S.A. 47:1A-6; Kohn, GRC 2011-327.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that he did not unlawfully deny access to the requested documents because he certified that he timely provided all responsive documents to the Complainant, and the Complainant did not provide competent, credible evidence contrary to the Custodian's certifications. Kohn v. Township of Livingston (Essex), GRC Complaint No. 2011-327 (February 2013).

Prepared By: Robert T. Sharkey, Esq.
Staff Attorney

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

June 17, 2014