



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 24, 2014 Government Records Council Meeting

Edgardo Collazo
Complainant

Complaint No. 2013-319

v.

Passaic County Superintendent of Elections
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 bore her burden of proving she lawfully denied access to the requested records because she certified that all responsive records were provided to the Complainant, and the Complainant provided no clarification of his request when the Custodian sought to obtain same. N.J.S.A. 47:1A-6; Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Kohn v. Township of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Schilling v. Township of Little Egg Harbor (Ocean), GRC Complaint No. 2011-293 (March 2013); Herron v. New Jersey Department of Education, GRC Complaint No. 2011-363 (December 2012); Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 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**

**Edgardo Collazo¹
Complainant**

GRC Complaint No. 2013-319

v.

**Passaic County Superintendent of Elections²
Custodial Agency**

Records Relevant to Complaint:

1. “A copy of the account payable report of the vendor called Elections Graphics, Inc. . . . [that] has billed the Offices of the [Passaic County Superintendent of Elections (“PCSE”)] . . . for elections support services as per proposal dated December 16, 2009.
 - Account payable for the [past] 4 years.
2. How [many] contract[s] do Elections Graphics . . . have with [PCSE] for service.
 - The account payable report per year on each of the contracts.
 - A 4 year history of the account payable report per contract.”

Custodian of Record: Sherine El-Abd

Request Received by Custodian: October 18, 2013

Response Made by Custodian: October 25, 2013

GRC Complaint Received: October 28, 2013

Background³

Request and Response:

On October 18, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 25, 2013, five (5) business days later, the Custodian replied by providing an accounts payable report for Election Graphics and by seeking clarification regarding the Complainant’s other requests.

¹ No legal representation listed on record.

² William Pascrell III, Esq. and Michael Glovin, Esq. (Paterson, N.J.).

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.

Edgardo Collazo v. Passaic County Superintendent of Elections, GRC 2013-319 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On October 28, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian did not provide records responsive to the entirety of his request.

Statement of Information:

On January 7, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the request on October 18, 2013 and responded on October 25, 2013. The Custodian argues that no denial of access occurred because she provided the Complainant with the requested accounts payable report and requested clarification regarding the remainder of the request. Further, the Custodian notes that the Complainant did not respond to her request for clarification, but instead filed the instant complaint.

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 Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the custodian certified that the record provided to the complainant was the only record responsive to the request. Id. The Council found that there had thus been no unlawful denial of access. Id. See also Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011) (holding custodian did not unlawfully deny access when he certified that he provided all responsive records to complainant, and there existed no credible evidence in record to refute such certification).

Additionally, the Council has determined that a custodian bore her burden of proving a lawful denial of access when she sought written clarification of a request but received no reply from the complainant. See Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2011-293 (March 2013); Herron v. N.J. Dep’t of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

Here, the Custodian certified that she provided “all information as requested in its entirety.” The Complainant has provided no evidence or argument that refutes this certification, and the record shows that the Custodian disclosed a responsive accounts payable report to the Complainant. Similarly, the Complainant did not respond to the Custodian’s request for clarification.

Therefore, the Custodian bore her burden of proving she lawfully denied access to the requested records because she certified that all responsive records were provided to the Complainant, and the Complainant provided no clarification of his request when the Custodian sought to obtain same. N.J.S.A. 47:1A-6; Burns, GRC 2005-68; Kohn, GRC 2009-203 & 2009-211; Schilling, GRC 2011-293; Herron, GRC 2011-363; Moore, GRC 2005-80.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian bore her burden of proving she lawfully denied access to the requested records because she certified that all responsive records were provided to the Complainant, and the Complainant provided no clarification of his request when the Custodian sought to obtain same. N.J.S.A. 47:1A-6; Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Kohn v. Township of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Schilling v. Township of Little Egg Harbor (Ocean), GRC Complaint No. 2011-293 (March 2013); Herron v. New Jersey Department of Education, GRC Complaint No. 2011-363 (December 2012); Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

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

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

June 17, 2014