



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**

Edgardo Collazo  
Complainant

Complaint No. 2013-336

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 November 3, 2013 payroll records because she certified, and the record indicates, that no responsive documents exist. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Department of Education, 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 24<sup>th</sup> 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 Collazo<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-336**

v.

**Passaic County Superintendent of Elections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The payroll history “of Nov. 3, 2013 [for] the employee[s] of the office of the [Passaic County Superintendent of Elections (“PCSE”)].”

**Custodian of Record:** Sherine El-Abd

**Request Received by Custodian:** November 7, 2013

**Response Made by Custodian:** November 8, 2013

**GRC Complaint Received:** November 20, 2013

**Background<sup>3</sup>**

**Request and Response:**

On November 7, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 8, 2013, one (1) business day later, the Custodian replied by denying the request and stating that no such record existed.

**Denial of Access Complaint:**

On November 20, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not provide any additional arguments to the GRC to support his complaint.

**Statement of Information:**

On January 7, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the request on November 7, 2013 and responded on November 8, 2013. The Custodian argues that no denial of access occurred because the

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> William Pascrell III, Esq. and Michael Glovin, Esq. (Paterson, N.J.).

<sup>3</sup> 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 2013-336 – Findings and Recommendations of the Executive Director

Complainant requested payroll records for Sunday, November 3, 2013, a day on which PCSE offices were closed and, thus, for which no responsive records existed. The Custodian also argues that the complaint is moot because on December 6, 2013, subsequent to the Complainant's filing with the GRC, he submitted a clarification that asked for payroll records for the week ending November 1, 2013. The Custodian states that PCSE provided the Complainant with the responsive timesheet (covering October 19, 2013 to November 1, 2013) and, because his original request was for records from the following week, PCSE also disclosed the responsive timesheets for the next pay period (covering November 1, 2013 to November 15, 2013).

### **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.

The Council has previously found that, in light of a custodian's certification that no records responsive to the request exist, no unlawful denial of access occurred. *See Pusterhofer v. N.J. Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005). Here, the Custodian certified that no payroll records from Sunday, November 3, 2013 exist, and the record indicates that this is the case.

Notably, though not the determinative factor in assessing whether a denial of access occurred here, the Custodian has also certified that the Complainant submitted a clarification of his request after he filed the instant complaint, and that the Custodian in turn provided the Complainant with all responsive documents.

Therefore, the Custodian bore her burden of proving she lawfully denied access to the November 3, 2013 payroll records because she certified, and the record indicates, that no responsive documents exist. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian bore her burden of proving she lawfully denied access to the November 3, 2013 payroll records because she certified, and the record indicates, that no responsive documents exist. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

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

Approved By: Dawn R. SanFilippo, Esq.  
Acting Executive Director  
June 17, 2014