



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

July 29, 2014 Government Records Council Meeting

Larry S. Loigman, Esq.
(On behalf of Middletown
Township Safety Council)
Complainant

Complaint No. 2013-342

v.

Monmouth County Prosecutor's Office
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council ("Council") considered the July 22, 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 Complainant failed to allege either which documents were wrongfully withheld by the Custodian or why the records that the Custodian did provide amounted to an unlawful denial of access. Further, he did not advance any arguments or cite to any legal precedents in support of his complaint, nor did he raise any objections to the SOI. Thus, in light of the Custodian's submissions to the GRC and provision of responsive documents to the Complainant, the Custodian has borne his burden of proving that he did not unlawfully deny access to the responsive records. *See N.J.S.A. 47:1A-6.*

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 29th Day of July, 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: July 31, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 29, 2014 Council Meeting**

Larry S. Loigman, Esq.
(on behalf of Middletown Township Safety Council)¹
Complainant

GRC Complaint No. 2013-342

v.

Monmouth County Prosecutor's Office²
Custodial Agency

Records Relevant to Complaint:

Item No. 1: All subpoenas sent or delivered to, or served on, any municipal employee, officer or official of the Township of Middletown, New Jersey ("Township"), from October 1, 2012 to present, whether *ad testificandum* or *duces tecum*, relating in any way to the investigation of Robert Oches, a municipal employee, or to the use of electric generators owned by the Township.

Item No. 2: All responses to the subpoenas described in #1, above.

Item No. 3: All subpoenas sent or delivered to, or served on, the municipal administrator or any member of the governing body of the Township, from October 1, 2012, to present, whether *ad testificandum* or *duces tecum*, regardless of subject or cause.

Item No. 4: All responses to the subpoenas described in #3, above.

Item No. 5: All municipal records of the Township delivered to, or received by, or taken into the possession of, the Prosecutor of Monmouth County ("Prosecutor") (or any of his agents, servants or employees), from October 1, 2012 to present.

Item No. 6: All correspondence, including letters, memoranda, e-mail messages, notes, forms, or similar written communication, by and between the Prosecutor (or any of his agents, servants or employees), on the one hand, and any municipal employee, officer or official of the Township, on the other hand, from October 1, 2012 to present, relating in any way to the investigation of Robert Oches or to the use of electric generators owned by the Township of Middletown.

Item No. 7: All correspondence, including letters, memoranda, e-mail messages, notes, forms, or similar written communication, by and between Robert Oches (or any attorney or any similar representative on his behalf), a municipal employee of the Township of Middletown, on the one

¹ No legal representation listed on record.

² No legal representation listed on record.

hand, and the Prosecutor (or any of his agents, servants or employees), on the other hand, from October 1, 2012, to present, regardless of subject or cause.

Item No. 8: All statements, interviews, depositions, or the transcript of same, of any municipal employee of the Township, from October 1, 2012 to present, regardless of subject or cause.

Item No. 9: All correspondence, including letters, memoranda, e-mail messages, notes, forms, or similar written communication, by and between the Prosecutor (or any of his agents, servants or employees) wherein said Prosecutor exercised, used, deployed, discharged or applied his supervisory authority over any police department or law enforcement agency in Monmouth County, from January 1, 2012 to present, or memorialized any such exercise, use, deployment, discharge or application of such supervisory authority.

Custodian of Record: Carey J. Huff, Esq.

Request Received by Custodian: November 12, 2013

Response Made by Custodian: November 21, 2013

GRC Complaint Received: November 27, 2013

Background³

Request and Response:

On November 12, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 21, 2013, seven (7) business days later, the Custodian responded in writing by partially denying the Complainant’s request Items No. 1, 2, 3, and 4 for seeking exempt grand jury materials, Item No. 6 for seeking exempt criminal investigatory and internal affairs documents, and Items 3, 4, 5, 7, 8, and 9 for being overly broad. The Custodian also sought clarification of Item No. 9. Additionally, the Custodian granted access to four (4) documents related to the purchase of generators by the Township after October 1, 2012 that he identified as responsive to the Complainant’s request.

Denial of Access Complaint:

On November 27, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant provided no supplementary arguments with his complaint.

The Complainant also did not provide to the GRC any additional arguments in response to the Custodian’s Statement of Information.

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 13, 2013, the Custodian filed a Statement of Information (“SOF”). The Custodian certifies that he received the request on November 12, 2013 and responded on November 21, 2013.

The Custodian first argues that Items No. 1, 2, 3, and 4 were properly denied because any subpoenas or responses to such are exempt from access as confidential grand jury records. *Citing N.J.S.A. 47:1A-9(a); R. 3:6-7; R. 1:38-3(c)(4)*. Further, the Custodian contends that any potential records responsive to Item No. 6 are exempt as criminal investigatory and internal affairs records. *Citing N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-3(a); N.J.S.A. 47:1A-9; Executive Order No. 21 (McGreevey 2002); O’Shea v. Twp. of W. Milford, 410 N.J. Super. 371, 384-85 (App. Div. 2009) Janeczko v. N.J. Dep’t of Law & Pub. Safety, GRC Complaint Nos. 2002-79 & 2002-80 (June 2004)*. Relatedly, the Custodian maintains that he lawfully declined to admit or deny whether any responsive grand jury or investigatory records exist in order to protect individual privacy interests where no arrests have been made or charges brought. *Citing N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-3(b); Burnett v. Cnty. of Bergen, 198 N.J. 408, 422-23 (2009); Matter of Grand Jury Testimony, 124 N.J. 433, 455-56 (1991); N. Bergen Media Grp. V. the Bergen Cnty. Prosecutor’s Office, et al., No. L-6741-13 (Sup. Ct. of Bergen Cnty.)*.

Additionally, the Custodian asserts that Items No. 3, 4, 5, 7, 8, and 9 are overly broad and, as such, he acted lawfully in seeking clarification from the Complainant. *Citing N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009)*. The Custodian notes, for example, that he cannot search for correspondence received or sent by his office based on the identity of a party or a party’s employer. Likewise, the Custodian notes that the names of two (2) individuals identified in the requests appear on the letterheads of their respective agencies, potentially widening the scope if responsive documents to a burdensome level.

The Custodian states that by “reading the entirety of the request in context” he was able to identify and disclose four (4) pages of documents, but that “[n]o further responsive records could be identified until and unless the requestor provided clarification.”

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 Complainant failed to allege either which documents were wrongfully withheld by the Custodian or why the records that the Custodian did provide amounted to an unlawful denial of access. Further, he did not advance any arguments or cite to any legal precedents in support of his complaint, nor did he raise any objections to the SOI. Thus, in light of the Custodian's submissions to the GRC and provision of responsive documents to the Complainant, the Custodian has borne his burden of proving that he did not unlawfully deny access to the responsive records. *See* N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant failed to allege either which documents were wrongfully withheld by the Custodian or why the records that the Custodian did provide amounted to an unlawful denial of access. Further, he did not advance any arguments or cite to any legal precedents in support of his complaint, nor did he raise any objections to the SOI. Thus, in light of the Custodian's submissions to the GRC and provision of responsive documents to the Complainant, the Custodian has borne his burden of proving that he did not unlawfully deny access to the responsive records. *See* N.J.S.A. 47:1A-6.

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

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

July 22, 2014