



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**

**September 24, 2013 Government Records Council Meeting**

Kenneth Mayer  
Complainant

Complaint No. 2013-44

v.

Manchester Utilities Authority (Passaic)  
Custodian of Record

At the September 24, 2103 public meeting, the Government Records Council (“Council”) considered the September 17, 2013 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. The Custodian herein requested clarification in writing of the Complainant’s request to inspect “all” of the MUA’s meeting minutes and “all” audited financial reports, and because the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records under N.J.S.A. 47:1A-6. See 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).
2. The Custodian timely responded and granted inspection of the requested financial audit reports, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and therefore she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection. 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 24th Day of September, 2013

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: September 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 24, 2013 Council Meeting**

**Kenneth Mayer<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-44**

**v.**

**Manchester Utilities Authority (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Inspection of all minutes of Manchester Utilities Authority (“MUA”) meetings and all MUA financial audit reports.

**Custodian of Record:** Denise Wahad

**Request Received by Custodian:** March 7, 2011

**Response Made by Custodian:** March 9, 2011

**GRC Complaint Received:** February 7, 2013

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

**Request and Response:**

On March 7, 2011, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian for the above-referenced documents. On March 9, 2011, two (2) business days later, the Custodian responded in writing to the Complainant’s request for inspection of “minutes of MUA meetings – all” and “financial audit reports – all.” The Custodian sought clarification of the Complainant’s request and asked that he specify which particular records were being sought. On March 29, 2011, the Custodian, having received no response from the Complainant, contacted him to advise that copies of the MUA financial statements for the years 2005 through 2009 could be obtained at the MUA offices.

**Denial of Access Complaint:**

On February 7, 2013, two (2) years after the date of the OPRA request, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that access to inspect the requested records has not been provided.

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

<sup>2</sup> Represented by Casey Anne Cordes, Esq. (Woodland Park, NJ).

<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.

### Statement of Information:

On February 25, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on March 7, 2011. The Custodian further certifies that she responded to the Complainant on March 9, 2011, and sought clarification of the Complainant’s request. The Custodian also certifies that she wrote to the Complainant on March 29, 2011, to again seek clarification and to inform the Complainant that the 2005 through 2009 financial audit reports could be obtained at the MUA.

Further, the Custodian certifies that the Complainant requested an on-site inspection of the documents. The Custodian additionally certifies that the Complainant did not respond to either the Custodian’s March 9, 2011 or March 29, 2011 letters, nor did the Complainant appear at the MUA to inspect the financial audit reports.

The Custodian certifies that she located archived copies of the MUA documents the Complainant requested, and that the approximate total length of the MUA meeting minutes is between 400 and 1,260 pages. The Custodian further certifies that the 2005 through 2009 MUA financial audit reports referenced in her March 29, 2011 letter to the Complainant represented “all” finalized MUA audit reports as of the date of Complainant’s OPRA request. The Custodian contends that she sought clarification of the Complainant’s request so that, given the MUA’s limited staffing and resources, the records sought by the Complainant could be identified and provided.

### Analysis<sup>4</sup>

#### 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.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). As also prescribed under N.J.S.A. 47:1A-5(i), a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).

In Herron v. N.J. Dep’t of Educ., GRC Complaint No. 2011-363 (December 2012), the Council determined that the custodian bore her burden of proving a lawful denial of access to the requested records because she sought clarification of the complainant’s request and the complainant provided no clarification. *See* Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

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<sup>4</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

Here, the Complainant sought “all” MUA meeting minutes and “all” MUA financial audit reports. The Custodian responded, within two (2) business days, by asking the Complainant to clarify his request for documents. The Custodian received no reply to her March 9, 2011 response to the Complainant. After compiling the requested financial audit records from the MUA archive, the Custodian wrote to the Complainant on March 29, 2011, to again seek clarification of Complainant’s request for “all” MUA meeting minutes and to inform him that the MUA’s 2005-2009 financial audit reports were available for inspection. The Custodian received no response from the Complainant.

The evidence indicates that the Custodian responded to the Complainant within seven (7) business days, in writing, seeking clarification of the OPRA request. The Custodian’s response was thus appropriate and within the law. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, the Custodian compiled and made available for inspection all of the audit reports available despite the fact that the complainant failed to clarify his request. The Complainant failed to avail himself of his right to inspect the responsive records. Thus, the evidence supports that the Custodian did not unlawfully deny access to the records sought and has not violated OPRA.

Therefore, because the Custodian herein requested clarification in writing of the Complainant’s request to inspect “all” of the MUA’s meeting minutes and “all” financial audit reports, and the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records under N.J.S.A. 47:1A-6. *See Herron, GRC 2011-363; Moore, GRC 2005-80*. The Custodian acted reasonably under the circumstances.

Further, because the Custodian responded and granted inspection of the requested financial audit reports, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian herein requested clarification in writing of the Complainant’s request to inspect “all” of the MUA’s meeting minutes and “all” audited financial reports, and because the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records under N.J.S.A. 47:1A-6. *See 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)*.
2. The Custodian timely responded and granted inspection of the requested financial audit reports, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and therefore she did not unlawfully deny access to those records regardless of

whether the Complainant chose not to avail himself of his right to inspection.  
N.J.S.A. 47:1A-6.

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

Approved By: Brandon D. Minde, Esq.  
Executive Director

September 17, 2013