



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

October 29, 2013 Government Records Council Meeting

Regina Shuster
Complainant

Complaint No. 2013-49

v.

Township of Pittsgrove (Salem)
Custodian of Record

At the October 29, 2013 public meeting, the Government Records Council (“Council”) considered the October 22, 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 did not unlawfully deny access to request item number 3 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. *See Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005).
2. Since the Custodian certified that all of the requested records that existed were posted on the Township’s website, which was a means of disclosure requested by the Complainant, and since the Complainant declined to certify that the records were not posted on the website in a timely manner but rather certified that the Custodian resolved this complaint to her satisfaction, the Custodian did not deny access to request items numbered 1, 2, 4 and 5 in violation of 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 October, 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: November 1, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 29, 2013 Council Meeting**

**Regina Shuster¹
Complainant**

GRC Complaint No. 2013-49

v.

**Township of Pittsgrove (Salem)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies, via e-mail or through postings on the Township of Pittsgrove's website, of the following records:

1. Pittsgrove Township Committee meeting minutes for meetings held on December 2012 and January 2013;
2. Pittsgrove Township Planning Board minutes for the December 2012 meeting and agenda for meetings through January 2013;
3. Pittsgrove Township Agricultural Committee minutes for the December 2012 meeting and agenda for the January 2013 meeting;
4. Pittsgrove Township Environmental Commission minutes for the November 2012 meeting and agenda for meetings held in January 2013;
5. Pittsgrove Township Recreation Advisory Committee minutes for December 2012 and agenda for the February 4, 2013 meeting.

Custodian of Record: Steve Wymbbs

Request Received by Custodian: February 4, 2013

Response Made by Custodian: February 5, 2013

GRC Complaint Received: January 11, 2013

Background³

Request and Response:

On February 4, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian for the above-referenced records. On February 5, 2013, the first (1st)

¹ No legal representation listed on record.

² Represented by George G. Rosenburger, Jr., Esq. (Woodstown, NJ).

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.
Regina Shuster v. Township of Pittsgrove (Salem), 2013-49 – Findings and Recommendations of the Executive Director

business day following receipt of said request, the Custodian responded in writing seeking clarification of part of the Complainant's request.⁴

Denial of Access Complaint:

On February 14, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that she received no response from the Custodian other than a request for clarification on February 5, 2013. The Complainant further states that she neither received any of the requested records nor saw them posted on the Pittsgrove Township website.

Statement of Information:

On April 22, 2013, the Custodian filed a Statement of Information ("SOI") with the GRC. The Custodian certifies he received the Complainant's OPRA request on February 4, 2013, and responded to the request on February 5, 2013 by seeking clarification of part of the request. The Custodian certifies that all of the documents that exist are posted on the Township's website. The Custodian further certifies that he is not sure precisely when the records were posted to the website but as of April 22, 2013, he is certain that all requested records had been posted. The Custodian certifies that the records responsive to request item number 3 do not exist because the meetings encompassed within the time frame of the request were canceled.

Additional Information:

On September 10, 2013, the GRC informed the Complainant that she stated she requested the records via either e-mail or by the Custodian posting them on the Township's website. The GRC further informed the Complainant that the Custodian certified that the Complainant was granted access to the records because they were posted on the website. The GRC told the Complainant that, although she stated that the records were not posted on the web in a timely manner, the GRC has no way of determining when the items were posted following her request, and therefore whether the records were posted during the relevant time period. For this reason, the GRC asked the Complainant to forward to the GRC a legal certification listing the date or dates she checked the website following her request and whether the requested records appeared on the website at that time.

On September 19, 2013, the Complainant forwarded a certification to the GRC in which she stated, "I certify that this matter has been satisfactorily resolved."

⁴ There is nothing in the evidence of record to indicate that the Complainant clarified her request for the Custodian. In fact, to the contrary, it appears that she did not clarify her request because in the records denied list section of the complaint she listed the denied records exactly as they were listed in the OPRA request.
Regina Shuster v. Township of Pittsgrove (Salem), 2013-49 – Findings and Recommendations of the Executive Director

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 Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that the records responsive to request item number 3, Agricultural Committee minutes for the December 2012 meeting and an agenda for the January 2013 meeting, do not exist because the meetings encompassed within the time frame of the request were canceled.

As such, the Custodian did not unlawfully deny access to request item number 3 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. *See Pusterhofer, supra.*

As to request items numbered 1, 2, 4 and 5, the Custodian certified that all of the records were posted on the Township’s website but the Custodian was not sure when they were posted. While availability on the Township’s website was one means of disclosure requested by the Complainant, the Custodian was unsure when the records were posted and thus the GRC could not be certain if the records were made available to the Complainant in a timely manner. For this reason, the GRC asked the Complainant for a certification listing the date or dates she checked the website and whether the requested records appeared on the website at that time.

On September 19, 2013, the Complainant forwarded a certification to the GRC in which she stated, “I certify that this matter has been satisfactorily resolved.”

Therefore, since the Custodian certified that all of the requested records that existed were posted on the Township’s website, which was a means of disclosure requested by the Complainant, and since the Complainant declined to certify that the records were not posted on the website in a timely manner but rather certified that the Custodian resolved this complaint to her satisfaction, the Custodian did not deny access to request items numbered 1, 2, 4 and 5 in violation of N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to request item number 3 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).*
2. Since the Custodian certified that all of the requested records that existed were posted on the Township's website, which was a means of disclosure requested by the Complainant, and since the Complainant declined to certify that the records were not posted on the website in a timely manner but rather certified that the Custodian resolved this complaint to her satisfaction, the Custodian did not deny access to request items numbered 1, 2, 4 and 5 in violation of N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart, Esq.

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

October 22, 2013