



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

May 26, 2015 Government Records Council Meeting

Jermaine A. Williams
Complainant

Complaint No. 2014-297

v.

Passaic County Prosecutor's Office
Custodian of Record

At the May 26, 2015 public meeting, the Government Records Council ("Council") considered the May 19, 2015 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 has borne her burden of proof that she lawfully denied access to the requested 9-1-1 transcript described in the Complainant's July 8, 2014, OPRA request because she certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., 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 26th Day of May, 2015

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: May 28, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 26, 2015 Council Meeting**

**Jermaine A. Williams¹
Complainant**

GRC Complaint No. 2014-297

v.

**Passaic County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Hard copy of a transcript from a 9-1-1 call made on September 26, 1999.

Custodian of Record: Mary Catherine Ryan
Request Received by Custodian: July 8, 2014
Response Made by Custodian: August 1, 2014
GRC Complaint Received: August 20, 2014

Background³

Request and Response:

On July 2, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On July 17, 2014, the Custodian responded to the Complainant by advising that she would need until August 1, 2014, to determine if the Prosecutor's Office had the requested record. On August 1, 2014, the Custodian responded in writing to deny access because her office was not in possession of the requested records.

Denial of Access Complaint:

On August 14, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he "re-submitted" an earlier, previously denied OPRA request for the above-mentioned records, after being asked to provide more specific information about the nature of his request. To support his request, the

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Complainant stated that he provided a copy of a court transcript stating that a tape of the above-mentioned 9-1-1 call does exist.

Statement of Information:

On October 15, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 8, 2014. The Custodian certified that on July 17, 2014, she extended the time to respond until August 1, 2014, in order to determine whether she was in possession of the requested records. The Custodian certified that a search was conducted of “all files in our possession related to this case,” including the docket file and the investigatory file. The Custodian certified that her office was not in possession of a transcript from the 9-1-1 recording referenced by the Complainant. The Custodian certified that she responded to the Complainant’s OPRA request in writing on August 1, 2014, denying the Complainant’s OPRA request because her office was not in possession of the requested record.

Further, the Custodian certified that the Complainant asked for a “copy of the 911 transcript,” which she interpreted as a request for a transcript of the 911 recording, and not the 9-1-1 recording itself. The Complainant certified that there was no indication that a transcript existed, and if one did, there did not appear to have been any violations of the retention requirements if she was no longer in possession of same.

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 transcript of the 9-1-1 tape existed. Additionally, the Complainant failed to provide any evidence in the record to rebut the Custodian’s certification. Rather, the court transcript provided by the Complainant referenced the existence of a 9-1-1 “tape,” but not a “transcript” of said tape.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested 9-1-1 transcript described in the Complainant’s July 8, 2014, OPRA request because she certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; *Pusterhofer*, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the requested 9-1-1 transcript described in the Complainant's July 8, 2014, OPRA request because she certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Husna Kazmir
Staff Attorney

Approved By: Dawn R. SanFilippo
Deputy Executive Director

May 19, 2015