



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

November 17, 2015 Government Records Council Meeting

Keith Werner
Complainant

Complaint No. 2014-348

v.

Middlesex County Board of Elections
Custodian of Record

At the November 17, 2015 public meeting, the Government Records Council ("Council") considered the November 10, 2015 Supplemental 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 based on the Complainant's written request to withdraw, no analysis is required and the matter should be dismissed. The Custodian is relieved of his obligations as set forth in the Council's July 28, 2015, Interim Order.

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 17th Day of November, 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: November 19, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***Reconsideration*
Supplemental Findings and Recommendations of the Executive Director
November 17, 2015 Council Meeting**

**Keith Werner¹
Complainant**

GRC Complaint No. 2014-348

v.

**Middlesex County Board of Elections²
Custodial Agency**

Records Relevant to Complaint:

The voter profiles of the following individuals:

- Theresa Corter
- T. Corter
- Tom/Tony Frizziola
- Raphael Dolce
- Bille Jean Dolce
- Anton Campos
- Bettie Norris
- Sarah G. Crowley
- Kevin Houseworth

Custodian of Records: James Vokral
Request Received by Custodian: N/A
Response Made by Custodian: N/A
GRC Complaint Received: October 17, 2014

Background

July 28, 2015 Council Meeting:

At its July 28, 2015, public meeting, the Council considered the July 21, 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, found that:

¹ No legal representation listed on record.

² Represented by Jeanne-Marie Scollo, Esq., (New Brunswick, NJ).

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian may have unlawfully denied access to the requested records because voter information is subject to public access under N.J.S.A. 19:31-18.1(a). However, because the Complainant is a convicted person, the home and mailing address(es) contained in any responsive record are not subject to disclosure under N.J.S.A. 47:1A-2.2. As such, the Custodian shall conduct a search for responsive records and produce them to the Complainant, or certify that no such record(s) exist.
3. **The Custodian shall comply with paragraph No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,³ to the Executive Director.⁴**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On July 29, 2015, the Council distributed its Interim Order to all parties. On August 3, 2015, the Custodian received the Interim Order via letter. On August 7, 2014, the Custodian requested a ten (10) day extension of time to file a request for reconsideration of the Council's Interim Order. On August 14, 2015, the Custodian filed a request for reconsideration of the Council's June 30, 2015, Interim Order based on new mistake, new evidence, and change in circumstances.

Subsequently, the GRC received two (2) written letters from the Complainant, dated August 8 and August 10, 2014, respectively. In the first letter, the Complainant requested a thirty (30) day extension of time to "file an objection, offer of proof in support and motion to reconsider" the Council's Interim Order. In the second letter, the Complainant stated that he "hereby withdraw[s] [his] complaints [*sic*] in the above-entitled matter" (Emphasis in original).

³ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁴ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

However, the Complainant added that he maintains his objection with the Council's Interim Order.

Analysis

Based on the Complainant's written request for withdrawal, no analysis is required and the matter should be dismissed. The Custodian is relieved of his obligations as set forth in the Council's July 28, 2015, Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that, based on the Complainant's written request to withdraw, no analysis is required and the matter should be dismissed. The Custodian is relieved of his obligations as set forth in the Council's July 28, 2015, Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Deputy Executive Director

November 10, 2015



State of New Jersey
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PO BOX 819
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CHRIS CHRISTIE
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KIM GUADAGNO
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CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

July 28, 2015 Government Records Council Meeting

Keith Werner
Complainant

Complaint No. 2014-348

v.

Middlesex County Board of Elections
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council ("Council") considered the July 21, 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:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian may have unlawfully denied access the requested records because voter information is subject to public access under N.J.S.A. 19:31-18.1(a). However, because the Complainant is a convicted person, the home and mailing address(es) contained in any responsive record are not subject to disclosure under N.J.S.A. 47:1A-2.2. As such, the Custodian shall conduct a search for responsive records and produce them to the Complainant, or certify that no such record(s) exist.
3. **The Custodian shall comply with paragraph No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 28th Day of July, 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: July 29, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 28, 2015 Council Meeting**

**Keith Werner¹
Complainant**

GRC Complaint No. 2014-348

v.

**Middlesex County Board of Elections²
Custodial Agency**

Records Relevant to Complaint:

The voter profiles of the following individuals:

- Theresa Corter
- T. Corter
- Tom/Tony Frizziola
- Raphael Dolce
- Bille Jean Dolce
- Anton Campos
- Bettie Norris
- Sarah G. Crowley
- Kevin Houseworth

Custodian of Records: James Vokral
Request Received by Custodian: N/A
Response Made by Custodian: N/A
GRC Complaint Received: October 17, 2014

Background³

Request and Response:

On July 7, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to seek the above-mentioned records. On August 18, 2014, the Complainant submitted a second (2nd) OPRA request, seeking the same records. There is no evidence in the record demonstrating that the Custodian responded to either request.

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.

Denial of Access Complaint:

On October 3, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant provided no additional arguments supporting his unlawful denial of access claim beyond the Custodian’s failure to respond.

Statement of Information:

On October 24, 2014, the GRC submitted a request for a Statement of Information (“SOI”) to the Custodian. On November 5, 2014, ten (10) business days later, the GRC submitted a No Defense Letter to the Custodian, alerting him that if he fails to submit an SOI by no later than November 10, 2014, the complaint would proceed to adjudication based solely upon the information submitted by the Complainant. N.J.A.C. 5:105-2.4(g). As of July 16, 2015, the GRC has not received a completed SOI from the Custodian.

Analysis

Timeliness

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). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁴ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

In the instant matter, the Complainant filed two (2) OPRA requests, one on July 7, 2014, and another on August 18, 2014, both of which sought the same records. The Complainant then filed his denial of access complaint on October 17, 2014, asserting that the Custodian failed to respond to either OPRA request. Since the Custodian failed to submit a completed Statement of Information, the GRC relies on the Complainant’s assertions. *See* N.J.A.C. 5:105-2.4(g).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC No. 2007-11.

⁴ A custodian’s written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

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 further provides that:

The provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other *statute*; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

N.J.S.A. 47:1A-9(a) (emphasis added).

In both OPRA requests, the Complainant sought the voter profiles of any person bearing nine (9) listed names. Voter profiles are public information via Title 19 of New Jersey’s statutes. N.J.S.A. 19:31-18.1 provides that “the county clerk in all counties shall cause copies of registry lists . . . to be printed, and shall be furnished to any voter applying for same such copies.” The Custodian’s website indicates that the following information is produced in response to a request for a voter’s profile:⁵

1. Whether the voter is currently registered.
2. The voter’s current address.
3. The voter’s mailing address (if different from current address).
4. Party affiliation.
5. Voting history.

Although N.J.S.A. 19:31-18.1 expresses the New Jersey legislature’s desire for open and robust political activity amongst the citizenry, the legislature also prioritizes the privacy rights of crime victims and their families against their offenders. Thus, OPRA prohibits a convicted person from accessing records relating to the victim of the person’s crime:

Notwithstanding the provisions of [OPRA] *or the provisions of any other law to the contrary*, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in [OPRA] shall be denied.

⁵ Requests for Voter Information (2014). Retrieved July 16, 2015.

N.J.S.A. 47:1A-2.2 (emphasis added).

In prior complaints, the Council has determined that custodians lawfully denied access to records under N.J.S.A. 47:1A-2.2. See McGill v. NJ Dep't of Corr., GRC Complaint No. 2012-90 (April 2013); Killion v. Hammonton Police Dep't (Atlantic), GRC Complaint No. 2013-228 (September 2014). Here, the evidence in the record demonstrates that the Complainant is an incarcerated individual, as he listed New Jersey State Prison as his mailing address. Additionally, within both OPRA requests, the Complainant affirmed that he has been convicted of an indictable offense under the laws of New Jersey, or any other state, or in the United States. Unlike McGill and Killion, however, it is unclear whether the individuals listed in the Complainant's OPRA request are among his victims or their relatives. Therefore, an offender's access to voter information must be weighed against the risk of disclosing personally identifiable information of his or her victims and their families.

In addition to his own affirmation as a convict, the Complainant's personal, handwritten certification contained within each OPRA request explicitly states that he is not seeking any information exempt under N.J.S.A. 47:1A-2.2. Additionally, N.J.S.A. 47:1A-2.2's exemption is not limited to OPRA but extends to "the provisions any other law to the contrary," including voter information accessible via Title 19. Id. Therefore, the GRC is satisfied that the privacy protections of the listed individuals outweigh the Complainant's right of access to specific portions of a voter's profile, in accordance with N.J.S.A. 47:1A-2.2. Specifically, the home and mailing address(es) are exempt from access; all other accessible voter information is subject to disclosure.

The Custodian may have unlawfully denied access the requested records since voter information is subject to public access under N.J.S.A. 19:31-18.1(a). However, because the Complainant is a convicted person, the home and mailing address(es) contained in any responsive record are not subject to disclosure under N.J.S.A. 47:1A-2.2. As such, the Custodian shall conduct a search for responsive records and produce them to the Complainant, or certify that no such record(s) exist.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily

mandated seven (7) business days, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

2. The Custodian may have unlawfully denied access the requested records because voter information is subject to public access under N.J.S.A. 19:31-18.1(a). However, because the Complainant is a convicted person, the home and mailing address(es) contained in any responsive record are not subject to disclosure under N.J.S.A. 47:1A-2.2. As such, the Custodian shall conduct a search for responsive records and produce them to the Complainant, or certify that no such record(s) exist.
3. **The Custodian shall comply with paragraph No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁶ to the Executive Director.⁷**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015

⁶ “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.