



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**November 17, 2015 Government Records Council Meeting**

Frank J. Campisi  
Complainant

Complaint No. 2014-370

v.

City of Millville (Cumberland)  
Custodian of Record

At the November 17, 2015 public meeting, the Government Records Council (“Council”) considered the November 10, 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 properly requested an extension of time until November 7, 2014, to address requested items No. 1, 2, and 3. However, the Complainant verified the complaint on November 5, 2014, two (2) business days prior to expiration of the extended time frame. Therefore, no denial of access to requested items 1, 2, and 3 had occurred at the time the complaint was filed. Accordingly, because the Complainant verified the instant complaint prior to the expiry of the extended time frame, the complaint, as pertaining to requested items number 1, 2, and 3, is materially defective and must be dismissed. Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013); *See also* Scheeler v. Dep’t. of Educ., GRC Complaint No. 2014-423 (September 2015).
2. With respect to requested item No. 4, because the Custodian provided responsive records to the Complainant on November 3, 2014, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification, the Custodian has met her burden of proving that there was no unlawful denial of access. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Pusterhofer v. N.J. 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 17<sup>th</sup> 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**

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

**Frank J. Campisi<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-370**

v.

**City of Millville (Cumberland)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of:

1. Any and all correspondence “in ANY form of discussions, minutes, emails (public accounts or private accounts used for public business), etc.” between current City Commissioners and any staff regarding any Commissioner’s desire to cease working with the Personnel Officer.
2. All information (messaging, e-mail, web searches, IP addresses) from the City’s computer terminals (including those located in the Commission’s chambers) on Commissioners Sooy and Compari.
3. Any disciplinary actions taken against the Personnel Officer from April 24, 2014, to present.
4. All information regarding the City’s Claim experience from January 1, 2010, to present day.

**Custodian of Record:** Susan G. Robostello

**Request Received by Custodian:** October 14, 2014<sup>3</sup>

**Response Made by Custodian:** October 23, 2014

**GRC Complaint Received:** November 5, 2014

**Background<sup>4</sup>**

**Request and Response:**

On October 13, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 23, 2014, the seventh (7<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing,

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

<sup>2</sup> Represented by Brock Russell, Esq., LLC (Millville, NJ).

<sup>3</sup> The request was sent via e-mail on October 13, 2014, a legal holiday.

<sup>4</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.

advising that she would need an extension of time to October 31, 2014. On October 31, 2014, the Custodian sought an additional extension of time until November 7, 2014. On November 3, 2014, at 4:30 p.m., the Custodian e-mailed to the Complainant the records deemed responsive to requested Item No. 4. However, on the same day at 5:25 p.m., the Complainant e-mailed the Custodian, advising that he would file a complaint if all documents were not received by close of business that day. On November 7, 2014, the Custodian e-mailed to the Complainant the records deemed responsive to requested items Nos. 1, 2, and 3.

#### Denial of Access Complaint:

On November 5, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his OPRA request was made on October 13, 2014, and that he had only received a response to requested item No 4, which he described as “a convoluted list of cases in no discernable order.” He asserted that he is “certain there is correspondence showing claim experience” that the Custodian had not provided.

#### Statement of Information:

On October 14, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complaint on October 14, 2014. The Custodian stated that she first responded in writing on October 23, 2014, advising the Complainant that an extension of time to October 31, 2014, was needed.<sup>5</sup> She further certified that on October 31, 2014, she subsequently advised the Complainant that another extension of time to November 7, 2014, was needed. She also certified that records responsive to item No. 4, consisting of a 13 page list of all information concerning the City of Millville’s claim history from January 1, 2010, to the present day, was e-mailed to the Complainant on November 3, 2014. She further certified that records responsive to requested items 1, 2, and 3, consisting of eight (8) pages of e-mails and a letter concerning the Personnel Officer, were e-mailed to the Complainant on November 7, 2014. The Custodian attached copies of the described responsive records to the SOI.

### 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.

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 (January 2010).

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<sup>5</sup> The Custodian attached an e-mail, dated October 23, 2014, from the Complainant to the Custodian, which indicated that the Complainant accepted or consented to the initial extension of time.

Requested Items 1, 2 and 3:

The Council has found additional extensions of time appropriate when they are both reasonable and sought inside a prior extended time frame. See Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order April 29, 2014), where a second extension of time was found appropriate because “[the custodian] . . . sought a second extension and responded prior to the expiration of same. . . .”

Here, the parties do not dispute that the Custodian received the OPRA request on October 14, 2014. Thereafter, the evidence of record reveals that the Custodian responded in writing on October 23, 2014, the seventh (7th) business day following receipt, and requested an extension of time until October 31, 2014. The record further reveals that the Custodian responded again on October 31, 2014, and asked for an additional seven (7) day extension until November 7, 2014.<sup>6</sup> Thus, the Custodian met his requirement of responding in writing to the Complainant’s OPRA request within the mandated seven (7) business day time frame, addressing request item number 5 and requesting an extension of time to respond to request item number 4. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i). Here, as in Delbury, GRC 2013-240, the second extension of time was sought before expiration of the prior extension. Moreover, the request for an extension of an additional four (4) business days was not unreasonable, given the nature of the request and the areas and sources that needed to be checked.

Although the evidence of record indicates that the Custodian properly requested an extension of time until November 7, 2014, to address request item numbers 1, 2, and 3, the Complainant verified his complaint on November 5, 2014, two (2) business days prior to the expiration of the extended time frame to respond.

In Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013), the custodian responded to the complainant’s requests within the statutorily-mandated time frame by requesting an extension of time for several weeks. In support of his request for the extension of time, the custodian cited, *inter alia*, the voluminous nature of the requests. The complainant, declaring his belief that an extension of time was unacceptable, verified his complaint a few days following receipt of the custodian’s response. The Council held that, “because the [c]omplainant verified his complaint before the statutory time period for the Custodian to respond **as extended** had expired, the complaint is materially defective and must be dismissed” (Emphasis in original).

In the instant matter, the Custodian properly requested an extension of time until November 7, 2014, to address request items 1, 2, and 3. However, the Complainant verified the complaint on November 5, 2014, two (2) business days prior to expiration of the extended time frame. The Complainant here, in a manner similar to the actions of the complainant in Inzelbuch, GRC 2012-323, filed his complaint prior to expiration of the extended time frame. Therefore, no denial of access to requested items No. 1, 2, and 3 had occurred at the time the complaint was filed. Accordingly, because the Complainant verified the instant complaint prior

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<sup>6</sup> The City of Millville was closed on November 4, 2014. Therefore, the second extension amounted to an additional four (4) business days.

to the expiry of the extended time frame, the complaint, as pertaining to requested items number No. 1, 2, and 3, is materially defective and must be dismissed. Inzelbuch, GRC 2012-323 *See also* Scheeler v. Dep't. of Educ., GRC Complaint No. 2014-423 (September 2015).

#### Request Item No. 4:

In Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the custodian produced one (1) responsive record to the complainant's OPRA request and stated that no other responsive records existed. The complainant argued that more responsive records existed. Id. The GRC asked the custodian to certify as to whether all responsive records were produced. The custodian subsequently certified that the disclosed document was the only responsive record. Id. In reviewing the matter, the GRC held that:

The Custodian certified that the Complainant was in receipt of all contracts and agreements responsive to the request. The Custodian has met the burden of proving that all records in existence responsive to the request were provided to the Complainant. Therefore there was no unlawful denial of access.

Here, the Complainant requested "all information regarding the City's Claim experience from 1/1/2010-present day." The Custodian responded by providing in list format thirteen pages of claims against the City, ranging from January 1, 2010, to October 27, 2014, and a single page letter concerning the claims. The Complainant alleged that the list was "convoluted" and in no particular order. However, the Council does not have authority over the content of a record. Kwanzaa v. Dep't. of Corr., GRC Complaint No. 2094-167 (March 2005). Also, although the Complainant alleged that he was "certain" there was correspondence showing claim experience that the Custodian had not provided, he provided no competent, credible evidence to refute the Custodian's certification that "all records [concerning requested item No. 4] were provided to complainant with no redactions on November 3, 2014."<sup>7</sup> *See also* Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

With respect to requested item No. 4, because the Custodian provided responsive records to the Complainant on November 3, 2014, and the Complainant provided no competent, credible evidence to refute the Custodian's certification, the Custodian has met her burden of proving that there was no unlawful denial of access. Burns, GRC 2005-68; Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian properly requested an extension of time until November 7, 2014, to address requested items No. 1, 2, and 3. However, the Complainant verified the complaint on November 5, 2014, two (2) business days prior to expiration of the extended time frame. Therefore, no denial of access to requested items 1, 2, and 3 had occurred at the time the complaint was filed. Accordingly, because the

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<sup>7</sup> On October 14, 2015, the Custodian again certified, consistent with her SOI, that "no records were denied."

Complainant verified the instant complaint prior to the expiry of the extended time frame, the complaint, as pertaining to requested items number 1, 2, and 3, is materially defective and must be dismissed. Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013); *See also* Scheeler v. Dep't. of Educ., GRC Complaint No. 2014-423 (September 2015).

2. With respect to requested item No. 4, because the Custodian provided responsive records to the Complainant on November 3, 2014, and the Complainant provided no competent, credible evidence to refute the Custodian's certification, the Custodian has met her burden of proving that there was no unlawful denial of access. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Ernest Bongiovanni  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

November 10, 2015