



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

October 27, 2015 Government Records Council Meeting

Mark L. Tompkins
Complainant
v.
City of Newark (Essex)
Custodian of Record

Complaint No. 2014-399

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that because the Custodian certified in the Statement of Information that the City does not maintain copies of any records responsive to the Complainant’s request, but rather such records might instead be maintained by the East Orange Police Department, and because there is no evidence in the record to refute the Custodian’s certification, the Custodian has not unlawfully denied access to the requested records pursuant to Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005) and 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 27th Day of October, 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: October 29, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting**

**Mark L. Tompkins¹
Complainant**

GRC Complaint No. 2014-399

v.

**City of Newark (Essex)²
Custodial Agency**

Records Relevant to Complaint: Certified copy of “the file,” W #2002-034287, including copies of all complaints, reports, orders, recalls, warrants, docket entries, disposals, and all paper filed into the events of the A.C.S. from: 10/18/2002 to 7/10/2003

Custodian of Record: Robert P. Marasco
Request Received by Custodian: June 21, 2013
Response Made by Custodian: July 16, 2013
GRC Complaint Received: November 25, 2014

Background³

Request and Response:

On June 3, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 16, 2013, the Custodian responded in writing, denying the request due to finding no such records. The Custodian further informed the Complainant that the Newark Police Department is not the custodian of the records. The Custodian stated that the Complainant should contact the East Orange Police Department, “as the warrant was issued through their department.”

Denial of Access Complaint:

On November 20, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s office claimed “no records found.” The Complainant asserted no other legal arguments.

¹ No legal representation listed on record.

² Represented by Vivian Sanks King, Esq.

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.

Statement of Information:

On December 18, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 21, 2013. The Custodian certified that he responded in writing on June 26, 2013, acknowledging receipt of the request and advising of an anticipated release date of July 2, 2013. The Custodian averred that the request was forwarded to the Newark Police Department for response. On July 16, 2013, the Custodian certified that a letter was sent to the Complainant informing him that “the City of Newark is not the custodian” of the requested records and recommending that the Complainant contact the East Orange Police Department. The Custodian additionally provided the address for the East Orange Police Department’s Records Division. The Custodian made no further legal argument as to the denial.

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 the agency does not maintain copies of the records responsive to the Complainant’s request, 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, after forwarding the request to the Newark Police Department, it was determined that the City was not in fact in possession of any records responsive to the request. The Custodian advised the Complainant that as the underlying warrant was issued through the East Orange Police Department, the Complainant should instead contact that department. The Complainant failed to provide any evidence in the record to rebut the Custodian’s certification that they did not house the requested document.

Accordingly, because the Custodian certified in the SOI that the City does not maintain copies of any records responsive to the Complainant’s request, but rather such records may be maintained by the East Orange Police Department, and because there is no evidence in the record to refute the Custodian’s certification, the Custodian has not unlawfully denied access to the requested records pursuant to Pusterhofer, GRC 2005-49 and N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian certified in the Statement of Information that the City does not maintain copies of any records responsive to the Complainant’s request, but rather such records might instead be maintained by the East Orange Police Department, and because there is no evidence in the record to refute the Custodian’s certification, the Custodian has not unlawfully denied access to the

requested records pursuant to Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005) and N.J.S.A. 47:1A-6.

Prepared By: Husna Kazmir
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2015