



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

September 29, 2016 Government Records Council Meeting

Clifford Wares
Complainant

Complaint No. 2014-410

v.

Passaic County Prosecutor's Office
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council ("Council") considered the August 23, 2016 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 did not unlawfully deny access to the Complainant's November 12, 2014 OPRA request by directing the Complainant to the proper custodian in accordance with N.J.S.A. 47:1A-5(h), N.J.S.A. 47:1A-6. Furthermore, the Custodian properly requested clarification of the OPRA request, and the Complainant failed to respond. Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-319 (June 2014); Herron v. NJ Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 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 29th Day of September, 2016

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 4, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2016 Council Meeting**

**Clifford Wares¹
Complainant**

GRC Complaint No. 2014-410

v.

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

Records Relevant to Complaint: Names, titles, job positions, salaries, payroll records, type of pensions, amount of pensions, dates of separation, reason for separation of the following Passaic County Prosecutors:³

- 1) Prosecutor Camelia M. Valdes
- 2) Chief Assistant Prosecutor Christopher Hsieh
- 3) Deputy First Assistant Prosecutor Joanne Kaminski
- 4) Senior Assistant Prosecutor Sumana Mitra
- 5) Assistant Prosecutor Eileen Kane

Custodian of Record: Mary Catherine Ryan, Esq.
Request Received by Custodian: November 12, 2014
Response Made by Custodian: November 21, 2014
GRC Complaint Received: December 2, 2014⁴

Background⁵

Request and Response:

On November 7, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On November 21, 2014, the seventh (7th) business day after receipt of the request, the Custodian responded in writing, denying access to the portion of the request seeking "payroll records" and "amount of pensions," as the agency is not in possession of such records. The Custodian directed the Complainant to contact the Passaic County Finance Department and seek those records there.

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Complainant claimed to have also sought identical information on Passaic County investigators; however, the record does not reflect this.

⁴ The Complainant signed the Denial of Access Complaint on November 24, 2014.

⁵ 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.

The Custodian then sought clarification from the Complainant on whether he sought the current salaries, titles, and job positions of the requested individuals, or sought the records from a different time of employment. Finally, the Custodian provided the “type of pensions” for the requested individuals.

On November 24, 2014, the Complainant submitted another OPRA request to the Custodian seeking the same records as above but without clarification as requested from the Custodian.

Denial of Access Complaint:

On December 2, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to any of his OPRA requests. The Complainant also claimed he sought the names, titles, salaries, job positions, type of pensions, dates of separation, and reasons for separation for named Passaic County investigators but failed to include copies of OPRA request(s) reflecting this claim.

Statement of Information:

On February 5, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 12, 2014. The Custodian certified that she timely responded in writing on November 21, 2014, denying access in part, providing information in part, and seeking clarification in part. The Custodian also certified that she received another OPRA request from the Complainant dated November 24, 2014, on December 1, 2014. The request sought the same information as the Complainant’s November 12, 2014 request but failed to clarify the time period of requested personnel information as asked for by the Custodian.

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 determined that a custodian bore her burden of proving a lawful denial of access when she sought written clarification of a request, but the complainant failed to respond and provide such clarification. *See* Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-319 (June 2014); Herron v. NJ Dep’t of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005). Additionally, OPRA requires public agency officers or employees to forward an

OPRA request to the proper custodian or to direct the requestor to the custodian. N.J.S.A. 47:1A-5(h).

In the instant matter, the Custodian directed the Complainant to the Passaic County Finance Department for payroll records and pension amounts for the identified individuals. Additionally, the Complainant failed to respond to the Custodian's request for clarification of his November 12, 2014 OPRA request and instead sent an additional request seeking the same records.

Therefore, the Custodian did not unlawfully deny access to the Complainant's November 12, 2014 OPRA request by directing the Complainant to the proper custodian in accordance with N.J.S.A. 47:1A-5(h). N.J.S.A. 47:1A-6. Furthermore, the Custodian properly requested clarification of the OPRA request, and the Complainant failed to respond. Collazo, GRC 2013-319; Herron GRC 2011-363; Moore, GRC 2005-80.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's November 12, 2014 OPRA request by directing the Complainant to the proper custodian in accordance with N.J.S.A. 47:1A-5(h). N.J.S.A. 47:1A-6. Furthermore, the Custodian properly requested clarification of the OPRA request, and the Complainant failed to respond. Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-319 (June 2014); Herron v. NJ Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

Prepared By: Samuel A. Rosado
Staff Attorney

August 23, 2016⁶

⁶ The matter was approved for the August 30, 2016 meeting but was cancelled due to lack of quorum.
Clifford Wares v. Passaic County Prosecutor's Office, 2014-410 – Findings and Recommendations of the Executive Director