



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

November 18, 2014 Government Records Council Meeting

Cynthia A. McBride
Complainant

Complaint No. 2014-54

v.

City of Camden (Camden)
Custodian of Record

At the November 18, 2014 public meeting, the Government Records Council (“Council”) considered the November 10, 2014 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:

1. The Custodian complied with the Council’s September 30, 2014 Interim Order because he responded within the prescribed time frame, providing the requested Tax Search Export file to the Complainant and provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the records, the Custodian complied with the Council’s September 30, 2014 Interim Order by producing the requested record and certification of compliance within the prescribed deadline. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 18th Day of November, 2014

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 20, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 18, 2014 Council Meeting**

**Cynthia A. McBride¹
Complainant**

GRC Complaint No. 2014-54

v.

**City of Camden (Camden)²
Custodial Agency**

Records Relevant to Complaint:

“I am requesting a copy of the public tax database as kept and maintained by the municipality’s tax collector[.] This ‘copy’ can be accomplished by sending the ‘tax search export’ file to Data Trace.”

Custodian of Record: Luis Pastoriza

Request Received by Custodian: January 13, 2014

Response Made by Custodian: January 21, 2014

GRC Complaint Received: January 27, 2014

Background

September 30, 2014 Council Meeting:

At its September 30, 2014 public meeting, the Council considered the September 23, 2014 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. The Custodian has not borne his burden of proving that the Complainant’s request for a Tax Search Export file is invalid as overly broad. N.J.S.A. 46:1A-6. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005). The evidence of record and case precedent demonstrates that a request for a Tax Search Export file created by the City of Camden’s tax software system is a sufficiently specific request. See Hall v. City of Camden (Camden), GRC Complaint No. 2013-305 (Interim Order July 29, 2014); Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014).

¹ No legal representation listed on record.

² Represented by Jason Asuncion, Esq. (Camden, NJ).

2. The Custodian has not borne his burden of proving that he lawfully denied access to the requested Tax Search Export file because the evidence of record demonstrates that that the City of Camden's tax office regularly creates and maintains the file in the normal course of official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. *See also Hall v. City of Camden (Camden)*, GRC Complaint No. 2013-305 (Interim Order July 29, 2914). The Custodian shall email a copy of the requested file to the Complainant.
3. **The Custodian shall comply with item number two (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 October 1, 2014, the Council distributed its Interim Order to all parties. On October 2, 2014, the Custodian responded to the Council's Interim Order.

Analysis

Compliance

At its September 30, 2014 meeting, the Council ordered the Custodian to produce the requested Tax Search Export file within five (5) business days from receipt of same, and to submit certified confirmation of compliance to the Executive Director. On October 1, 2014 the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on October 8, 2014.

On October 2, 2014, the first (1st) business day after receipt of the Council's Order, the Custodian responded, in writing, producing the requested record and certification of same.

Therefore, the Custodian complied with the Council's September 30, 2014 Interim Order because he responded within the prescribed time frame, providing the requested Tax Search

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 the Complainant incurred a copying or special service charge, 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.

Export file to the Complainant and provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty.” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA].” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian unlawfully denied access to the records, the Custodian complied with the Council’s September 30, 2014 Interim Order by producing the requested record and certification of compliance within the prescribed deadline. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s September 30, 2014 Interim Order because he responded within the prescribed time frame, providing the requested Tax Search Export file to the Complainant and provided certified confirmation of compliance to the Executive Director.

2. Although the Custodian unlawfully denied access to the records, the Custodian complied with the Council's September 30, 2014 Interim Order by producing the requested record and certification of compliance within the prescribed deadline. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

November 10, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

September 30, 2014 Government Records Council Meeting

Cynthia A. McBride
Complainant

Complaint No. 2014-54

v.

City of Camden (Camden)
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council ("Council") considered the September 23, 2014 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 has not borne his burden of proving that the Complainant's request for a Tax Search Export file is invalid as overly broad. N.J.S.A. 46:1A-6. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005). The evidence of record and case precedent demonstrates that a request for a Tax Search Export file created by the City of Camden's tax software system is a sufficiently specific request. See Hall v. City of Camden (Camden), GRC Complaint No. 2013-305 (Interim Order July 29, 2014); Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014).
2. The Custodian has not borne his burden of proving that he lawfully denied access to the requested Tax Search Export file because the evidence of record demonstrates that that the City of Camden's tax office regularly creates and maintains the file in the normal course of official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See also Hall v. City of Camden (Camden), GRC Complaint No. 2013-305 (Interim Order July 29, 2014). The Custodian shall email a copy of the requested file to the Complainant.
3. **The Custodian shall comply with item number two (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 the Complainant incurred a copying or special service charge, the Custodian must certify that the record

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 30th Day of September, 2014

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 1, 2014

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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 30, 2014 Council Meeting**

**Cynthia A. McBride¹
Complainant**

GRC Complaint No. 2014-54

v.

**City of Camden (Camden)²
Custodial Agency**

Records Relevant to Complaint:

“I am requesting a copy of the public tax database as kept and maintained by the municipality’s tax collector[.] This ‘copy’ can be accomplished by sending the ‘tax search export’ file to Data Trace.”

Custodian of Record: Luis Pastoriza

Request Received by Custodian: January 13, 2014

Response Made by Custodian: January 21, 2014

GRC Complaint Received: January 27, 2014

Background³

Request and Response:

On January 13, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 21, 2014, the Custodian responded, in writing, denying the request as overly broad, and for requiring the Custodian to create a record that is not ordinarily made, maintained, or kept on file.

Denial of Access Complaint:

On January 27, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not proffer additional arguments challenging the Custodian’s alleged denial of access. However, the Complainant provided an email sent to the Custodian dated January 22, 2014. The Complainant explained that the

¹ No legal representation listed on record.

² Represented by Jason Asuncion, Esq. (Camden, NJ).

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.

Custodian is capable of creating of an electronic copy of a “tax search export” (“TSE”) file with ease, and that TSE files are regularly “kept and maintained” by the Custodian.

Statement of Information:⁴

On March 24, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that OPRA requires the Custodian to disclose only those documents that are identifiable government records. He argued that OPRA does not allow the Complainant to seek “all the data and information contained in the [City of Camden’s] Tax Collector’s data base[sic].” The Custodian also claimed that the Complainant’s request required the Custodian to compile and collate data in a custom electronic format, and is therefore outside the Custodian’s responsibilities under OPRA.

Additional Submissions:

On March 25, 2014, the Complainant sent an email to the GRC with an attached computer screenshot. The Complainant alleged that the screenshot displays the tax software used by the City of Camden’s (“Camden”) tax collector’s office. She also claimed the screenshot demonstrates that the Custodian is capable of creating the requested TSE file using Camden’s tax software. Moreover, the Complainant alleged that prior to this objection, the Custodian delivered the TSE file to her without issue for the past eight (8) years.

On March 26, 2014, the Complainant sent another email to the GRC identifying Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014) as allegedly dispositive to her position.

Analysis

Invalid Request

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 New Jersey Appellate Division has held that OPRA “is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records readily accessible for inspection, copying, or examination.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (*citing* N.J.S.A. 47:1A-1) (quotations omitted).

The Court reasoned that “[u]nder OPRA, agencies are required to disclose only

⁴ The Custodian discussed a similar but separate OPRA request the Complainant submitted on January 27, 2014. Because the Complainant did not reference the request in her Denial of Access Complaint, it is not adjudicated in this matter.

‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. at 549.

The Council has previously found that a request for a “Tax Search Export” file is not overly broad. *See, e.g., Hall*, GRC No. 2013-211, Hall v. City of Camden (Camden), GRC Complaint No. 2013-305 (Interim Order July 29, 2014). The Council also held that the Custodian could not claim that a request for a TSE file is invalid as overly broad when he was capable of producing the file in response to prior requests. *See Hall*, GRC No. 2013-305.

The facts in this matter parallel that of Hall, id. The complainant in Hall sought the same TSE file from the Custodian as the Complainant here is seeking. *See id.* The Custodian denied the request in the current matter under the same rationale as in Hall, id. Furthermore, the Complainant maintained, as in Hall, that the Custodian previously provided her with the requested TSE file without objection. *See id.* Here, the Custodian did not challenge the Complainant’s allegations, nor did he distinguish between the current request and the request in Hall.

The Custodian has not borne his burden of proving that the Complainant’s request for a TSE file is invalid as overly broad. N.J.S.A. 47:1A-6. *See MAG*, 375 N.J. Super. at 546-549. The evidence of record and case precedent demonstrates that a request for a TSE file created by Camden’s tax software system is a sufficiently specific request. *See Hall*, GRC No. 2013-305; Hall, GRC No. 2013-211.

The Council has also previously held that the Custodian regularly creates and maintains the requested TSE file in the normal course of his duties. *See Hall*, GRC No. 2013-305. Here, the Custodian claimed that the Complainant’s request required him to create a record neither kept nor maintained in the normal course of business. *See id.* In Hall the Council rejected the Custodian’s argument, as the evidence demonstrated that Camden’s tax office regularly created and provided the TSE file to the complainant and other requestors. Id. Additionally, the Complainant produced a screenshot allegedly demonstrating the Custodian’s capability to create a TSE file using Camden’s tax software. The screenshot undercuts the Custodian’s contention that creating a TSE file would require compiling and collating data in a custom electronic format.

Therefore, the Custodian has not borne his burden of proving that he lawfully denied access to the requested TSE file because the evidence of record demonstrates that Camden’s tax office regularly creates and maintains the file in the normal course of official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. *See Hall*, GRC No. 2013-305. The Custodian shall email a copy of the requested file to the Complainant.

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 has not borne his burden of proving that the Complainant's request for a Tax Search Export file is invalid as overly broad. N.J.S.A. 46:1A-6. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005). The evidence of record and case precedent demonstrates that a request for a Tax Search Export file created by the City of Camden's tax software system is a sufficiently specific request. See Hall v. City of Camden (Camden), GRC Complaint No. 2013-305 (Interim Order July 29, 2014); Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014).
2. The Custodian has not borne his burden of proving that he lawfully denied access to the requested Tax Search Export file because the evidence of record demonstrates that that the City of Camden's tax office regularly creates and maintains the file in the normal course of official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See also Hall v. City of Camden (Camden), GRC Complaint No. 2013-305 (Interim Order July 29, 2014). The Custodian shall email a copy of the requested file to the Complainant.
3. **The Custodian shall comply with item number two (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 1:4-4,⁵ to the Executive Director.⁶**
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, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

September 23, 2014

⁵ "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."

⁶ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If the Complainant incurred a copying or special service charge, 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.