



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 27, 2018 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2014-67

v.

NJ Office of the Governor
Custodian of Record

At the March 27, 2018 public meeting, the Government Records Council (“Council”) considered the March 20, 2018 Supplemental Findings and Recommendations of the Council Staff 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 no further adjudication is necessary because the Complainant voluntarily withdrew the complaint in writing to the GRC on February 21, 2018.

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 March, 2018

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: March 29, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
March 27, 2018 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2014-67

v.

**State of New Jersey Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: “All OPRA requests filed in January of 2013. Please include all responses to requestors. Clarification I am NOT requesting the documents released.” (Emphasis in original).³

Custodian of Record: Heather Taylor⁴
Request Received by Custodian: July 19, 2013
Response Made by Custodian: July 26, 2013
GRC Complaint Received: February 4, 2014

Background

February 23, 2016 Council Meeting:

At the February 23, 2016 public meeting, the Government Records Council (“Council”) considered the February 16, 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:

1. The Custodian’s July 26, 2013 response was insufficient because the Custodian failed to sign and date the response. Therefore, the Custodian actions were inconsistent with N.J.S.A. 47:1A-5(f).
2. The issue of whether the Custodian unlawfully denied access via redaction to the requested OPRA request forms should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Jr. v. Office of the Governor, et al.,

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. DiPippo.

³ The Complainant failed to attach a copy of the records request to the complaint; therefore, the records relevant to the complaint are listed as they appeared in an agency internal e-mail dated July 2, 2013, that was attached to the Custodian’s Statement of Information.

⁴ Andrew McNally was the original Custodian.

Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division's decision to this complaint.

3. 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 further adjudication of this complaint.

Procedural History:

On February 24, 2016, the Council distributed its February 23, 2016 Interim Order to all parties. On March 8, 2016, the Custodian's Counsel responded to paragraph 1 of the Council's Interim Order by stating that:

Any issues regarding the sufficiency of the Office's responses to OPRA requests are now moot. The Office responded to the OPRA request at issue in this matter in July 2013. Heather Taylor was designated as the Custodian of Records for the Office in September 2014. Prior to that time, there was no single dedicated custodian of records. The Office's responses to OPRA requests issued after Ms. Taylor's designation as custodian fully comply with N.J.S.A. 47:1A-5(f). Thus, the Office respectfully submits that the issue has been resolved as to all requests received after Ms. Taylor's designation as custodian.

On February 21, 2018, the Complainant voluntarily withdrew the complaint via e-mail to the GRC.

Analysis

No analysis necessary.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that no further adjudication is necessary because the Complainant voluntarily withdrew the complaint in writing to the GRC on February 21, 2018.

Prepared By: John E. Stewart

March 20, 2018



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

INTERIM ORDER

February 23, 2016 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2014-67

v.

NJ Office of the Governor
Custodian of Record

At the February 23, 2016 public meeting, the Government Records Council (“Council”) considered the February 16, 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:

1. The Custodian’s July 26, 2013 response was insufficient because the Custodian failed to sign and date the response. Therefore, the Custodian actions were inconsistent with N.J.S.A. 47:1A-5(f).
2. The issue of whether the Custodian unlawfully denied access via redaction to the requested OPRA request forms should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Jr. v. Office of the Governor, et al., Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division’s decision to this complaint.
3. 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 further adjudication of this complaint.

Interim Order Rendered by the
Government Records Council
On The 23rd Day of February, 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: February 24, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 23, 2016 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2014-67

v.

**State of New Jersey Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: “All OPRA requests filed in January of 2013. Please include all responses to requestors. Clarification I am NOT requesting the documents released.” (Emphasis in original).³

Custodian of Record: Andrew McNally
Request Received by Custodian: July 19, 2013
Response Made by Custodian: July 26, 2013
GRC Complaint Received: February 4, 2014

Background⁴

Request and Response:

On July 19, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 26, 2013, the fifth (5th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the records responsive to the request were being disclosed in redacted form.

Denial of Access Complaint:

On February 4, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that on July 26, 2013, he received a letter from the Governor’s Office forwarding the requested records with unexplained

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. DiPippo (Counsel at the time the Statement of Information was filed was DAG Christopher Huber).

³ The Complainant failed to attach a copy of the records request to the complaint; therefore, the records relevant to the complaint are listed as they appeared in an agency internal e-mail dated July 2, 2013, that was attached to the Custodian’s Statement of Information.

⁴ 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.

redactions.⁵ The Complainant contends that the Custodian's explanation for the redactions is legally insufficient. The Complainant asserts that "[t]he intent to shield those who have filed an OPRA request with the Governor's Office in the name of 'reasonable expectation of privacy' is both unreasonable and ridiculous." The Complainant cites White v. William Patterson University, GRC Complaint No. 2008-216 (August 2009) in support of his assertion. The Complainant states that White held that "the identity of a requestor is not a consideration when deciding whether an exemption applies to a government record requested pursuant to OPRA except for those instances set forth at N.J.S.A. 47:1A-2.2 and N.J.S.A. 47:1A-10."

The Complainant states that the anonymous nature of the response from the Governor's Office to his request also concerns him. The Complainant states, "[h]ow am I to know whether the duly appointed Record's [sic] Custodian responded to this request or the office janitor did." The Complainant further states, "I request the GRC set a precedent [sic] and require this Custodian to identify themselves [sic]."

Statement of Information:

On March 14, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the Complainant's OPRA request on July 19, 2013, and that he responded in writing on July 26, 2013. The Custodian certifies that he disclosed to the Complainant the records responsive to the request, which consisted of eighty-eight (88) pages, with the personal information of the requestors redacted to protect their reasonable expectation of privacy. The Custodian certifies that he redacted the personal information of the requestors in order to protect their reasonable expectation of privacy as required by N.J.S.A. 47:1A-1. The Custodian also cites to the Council's decision in Wolosky v. Township of Parsippany-Troy Hills (Morris), GRC Complaint No. 2010-317 (March 2012), in support of his actions. The Custodian asserts that in Wolosky the Council determined that it was lawful for the custodian to redact the requestors' personal information. Specifically, the Custodian certifies that the Council held that "the privacy rights of individuals who submitted OPRA requests to the Township in their names, email addresses, and home addresses...outweighs the complainant's need for such information."

The Custodian further states that the Complainant failed to articulate any need for the personal information of the requestors. The Custodian certifies that although the Complainant argued that redacting the personal information of requestors "is both unreasonable and ridiculous," he failed to provide a legitimate need for the information.

With respect to his failure to sign the response form, the Custodian certifies that whether a custodian identifies himself or herself by name is irrelevant to whether the custodian improperly denied access to government records. Moreover, the Custodian certifies that the issue is now moot because the Custodian was identified in the SOI.

⁵ The Complainant attached the disclosed records to the complaint. Examination of the records revealed that the requestors' names and other identifying information had been redacted from said records.

Analysis

Sufficiency of Response

OPRA provides that on the response form there must be a “space for the custodian to sign and date the form . . .” N.J.S.A. 47:1A-5(f). Further, N.J.S.A. 47:1A-1.1 provides that a custodian, in other than a municipality, means “the officer officially designated by formal action of that agency's director or governing body . . .” As such, it is evident that the custodian must be identified on the response form as a natural person.

Here, the July 26, 2013 response was in the form of a letter addressed to the Complainant. Typed below the complimentary close was “Office of the Governor.” No custodian was identified by name, and the letter was not signed.

Accordingly, the Custodian’s July 26, 2013 response was insufficient because the Custodian failed to sign and date the response. Therefore, the Custodian’s actions were inconsistent with N.J.S.A. 47:1A-5(f).

Abeyance of Complaint

The GRC begins by noting that the Administrative Procedures Act gives the GRC broad latitude to effectuate the purposes of OPRA. N.J.S.A. 52:14B-1 et seq. Regarding the disclosability of OPRA request forms pursuant to an OPRA request, the Appellate Division is currently addressing this issue in Scheeler, Jr. v. Office of the Governor, et al., Docket No. A-1236-14T3. There, defendants are arguing that they lawfully denied access to OPRA requests based on the court’s holding in Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005). The GRC notes that it issued a few decisions regarding the disclosability of OPRA requests in the past. *See* Wolosky v. Twp. of Parsippany-Troy Hills (Morris), GRC Complaint No. 2010-317 (March 27, 2012); Anonymous v. NJ State Police, GRC Complaint No. 2014-78 (Interim Order January 30, 2015). However, the pending Appellate Division’s decision may affect the GRC’s analysis on this issue going forward.^[1]

Considering all the issues presented, as well as the prevailing question of disclosure currently being reviewed by the Appellate Division, the instant complaint should be held in abeyance pending the Appellate Division’s decision in Scheeler. Any decision to the contrary might lead to additional litigation, and could entail unnecessary costs for all parties. Additionally, by holding the complaint in abeyance, the GRC will avoid unnecessary adjudication and conserve public resources. The GRC is thus satisfied that abeyance is the most acceptable course of action at this time for all parties involved. *See, e.g.* Verry v. Franklin Fire District No. 1 (Somerset), GRC Complaint No. 2014-365 (September 2015).

Accordingly, the issue of whether the Custodian unlawfully denied access via redaction to the requested OPRA request forms should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division’s decision to this complaint.

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 further adjudication of this complaint.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's July 26, 2013 response was insufficient because the Custodian failed to sign and date the response. Therefore, the Custodian actions were inconsistent with N.J.S.A. 47:1A-5(f).
2. The issue of whether the Custodian unlawfully denied access via redaction to the requested OPRA request forms should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Jr. v. Office of the Governor, et al., Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division's decision to this complaint.
3. 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 further adjudication of this complaint.

Prepared By: John E. Stewart

February 16, 2016