



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**

**October 28, 2014 Government Records Council Meeting**

Paul A. Murphy, Jr.  
Complainant

Complaint No. 2014-76

v.

Borough of Atlantic Highlands (Monmouth)  
Custodian of Record

At the October 28, 2014 public meeting, the Government Records Council (“Council”) considered the October 21, 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 because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to documents, the Complainant failed to state a claim on which the Council could grant relief. See Alterman v. Sussex Cnty Sherriff’s Office, GRC Complaint No 2013-353 (September 2014); Loigman v Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320; Collazo v. Passaic v. Passaic Cnty Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such the matter should be dismissed. 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 28<sup>th</sup> Day of October, 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 30, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 28, 2014 Council Meeting**

**Paul A. Murphy, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-76**

v.

**Borough of Atlantic Highlands (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Minutes, written and tape recorded, of Atlantic Highlands Volunteer Fire Department (“AHVFD”) meeting of January 13, 2014.

**Custodian of Record:** Dwayne Harris

**Request Received by Custodian:** January 16, 2014

**Response Made by Custodian:** February 4, 2014

**GRC Complaint Received:** February 12, 2014

**Background<sup>3</sup>**

**Request and Response:**

On January 16, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-described records. On February 4, 2014, the eleventh (11<sup>th</sup>) business day following the request, the Custodian responded in writing denying the records. The Custodian stated that the AHVFD was a private company and not a public agency subject to OPRA. The Custodian stated he had no authority or control over the AHVFD minutes.

**Denial of Access Complaint:**

On February 12, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant sought the minutes, written and tape recorded of the January 13, 2014 meeting of the AHVFD located in Atlantic Highlands. The Complainant, however, failed to provide any argument or support for why he believed he was denied access to the records.

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

<sup>2</sup> Represented by Bernard Riley, Esq. (Red Bank, NJ)

<sup>3</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.

### Statement of Information:

On August 20, 2014 the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he has no authority over the AHVFD, as it is a private incorporated entity, whose business “is not under the authority of the Borough of Atlantic Highlands.” The Custodian contended the Borough had no jurisdictional right to obtain the requested minutes from the AHVFD so that they could provide them to the Complainant. In support of his position, the Custodian attached to his SOI proofs from the IRS which showed that the IRS has classified the AHVFD as a “501C” tax exempt nonprofit organization and also tax exempt under Section 509 2(2) of the Code. The Custodian also attached a portion of a Borough Ordinance which shows that the Borough divides its “fire department” into three companies and describes the terms of membership of each. Under the ordinance, each company has its own officers and its own bylaws. Finally the Custodian attached excerpts from three New Jersey Statutes that govern municipal contributions to incorporated volunteer fire departments, appropriations to fire departments, and municipal contracts with volunteer fire departments. N.J.S.A. 40A:14-44; N.J.S.A. 40A:14-34; N.J.S.A. 40A:14-68.

The Custodian contended the statutes govern the relationship between the Borough of Atlantic Highlands and the AHVFD. The municipality may contribute money to the AHVFD to a limit of \$90,000 per annum and/or may “contract with the company for the purposes of providing service to extinguish fires. According to N.J.S.A. 40A:14-68, “the members of such company shall be under the supervision and control of the municipality and in performing fire duty shall be deemed to be exercising a governmental function.” However, “the appointment or election of the chief of the volunteer fire company shall remain the prerogative of the membership of the fire company as set forth in the company’s certificate of incorporation or bylaws.” Accordingly, the Custodian maintained the AHVFD is not a public agency subject to OPRA.

### 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.

Additionally, OPRA provides a government record as:

“...any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business...”

N.J.S.A. 47:1A-1.1(Emphasis added.)

Here the Custodian claims as a threshold issue that the records being sought are not “government records” because the AHVFD is a private incorporated volunteer fire department and therefore not a public agency subject to OPRA. The Custodian has put forth substantial proofs. Without there being a determination that a public agency is involved, there is no requirement to receive or respond to OPRA requests. *See e.g. Fisher v. Matawan First Aid & Rescue Squad (Monmouth)*, GRC Complaint No. 2012-164 (May 2013) and *Carrow v. Borough of Newfield (Gloucester)*, GRC Complaint No. 2012-111 (February 2013).

The Complainant, however, has put forth no evidence to advance the proposition that the AHVFD is a public agency as defined and required by OPRA. The Complainant has not advanced any argument to support his claim for an unlawful denial of access for records. Nor did the Complainant identify any records which he believed the Custodian failed to disclose. As such, the Complainant failed to state a claim on which the GRC could grant relief.

Therefore because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to documents, the Complainant failed to state a claim on which the Council could grant relief. *See Alterman v. Sussex Cnty. Sherriff’s Office*, GRC Complaint No 2013-353 (September 2014); *Loigman v Monmouth Cnty. Prosecutor’s Office*, GRC Complaint No. 2013-342 (July 2014); *Inzelbuch v. Lakewood Bd. of Educ. (Ocean)* GRC Complaint No. 2013-320; *Collazo v. Passaic v. Passaic Cnty. Superintendent of Elections*, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to documents, the Complainant failed to state a claim on which the Council could grant relief. *See Alterman v. Sussex Cnty Sherriff’s Office*, GRC Complaint No 2013-353 (September 2014); *Loigman v Monmouth Cnty. Prosecutor’s Office*, GRC Complaint No. 2013-342 (July 2014); *Inzelbuch v. Lakewood Bd. of Educ. (Ocean)*, GRC Complaint No. 2013-320; *Collazo v. Passaic v. Passaic Cnty Superintendent of Elections*, GRC Complaint No. 2013-310 (July 2014). As such the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: Ernest Bongiovanni, Esq.  
Staff Attorney

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

October 21, 2014