



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

**FINAL DECISION**

**January 26, 2016 Government Records Council Meeting**

Randy George  
Complainant

v.

NJ Division of Consumer Affairs  
Custodian of Record

Complaint No. 2015-130

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 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 there was no denial of access where the Complainant sent the request via e-mail, a method of transmission which is not accepted by the agency, and which was directed to another section rather than to the Custodian. Such a limitation on transmissions of OPRA requests is not an unreasonable obstacle to access. N.J.S.A. 47:1A-5 (f). Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-148 (Interim Order dated May 28, 2013); Roundtree v. NJ Dep’t of State, GRC Complaint No. 2013-260 (June 2014). Furthermore, even had the requests been received, an exhaustive search by the Custodian yielded no responsive records. There is no competent, credible evidence to refute the Custodian’s certification that no responsive records exist. See Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 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 26<sup>th</sup> Day of January, 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: January 29, 2016**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 26, 2016 Council Meeting**

**Randy George<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-130**

v.

**New Jersey Division of Consumer Affairs<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The annual reporting forms for NJ Charities Registration Number CH-10274-00 for the following years: 2011, 2012, 2013, and 2014.

**Custodian of Record:** Robert J. Campanelli

**Request Received by Custodian:** n/a

**Response Made by Custodian:** n/a

**GRC Complaint Received:** May 13, 2015

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

**Request and Response:**

On April 14, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request via e-mail, seeking the above-mentioned records. He received no response.

**Denial of Access Complaint:**

On May 13, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted his request on April 14, 2015, and a duplicate request again on April 24, 2015, via e-mail. He attached copies of the emails, both addressed to [AskConsumerAffairs@lps.state.nj.us](mailto:AskConsumerAffairs@lps.state.nj.us), to his Complaint. Despite making the request twice, the Complainant alleged that he never received a response from the Custodian. A copy of the OPRA request form was attached to the Complaint.

**Statement of Information:**

On May 28, 2015, the Custodian filed a Statement of Information (“SOI”). The

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

<sup>2</sup> Represented by Deputy Attorney General Steven Flanzman.

<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.

Custodian certified that he never received the Complainant's OPRA request. The Custodian stated that the e-mail address used by the Complainant is for a different department. The Custodian stated that an OPRA icon is on the Division's main webpage for the public's convenience. He further stated that letter requests that are marked "OPRA" are sent to the Records Custodian. He stated that after receiving the Complaint, a vigorous search yielded no record of anyone at the Division ever receiving the request. While he thought the request may have been forwarded to the Charities Unit, a thorough search of the Unit revealed no record of receipt of the two requests, and therefore they are deemed lost. However, because the Complaint included a request in his Complaint, the Custodian made a thorough search of the Charities Unit's records and found no responsive records. He certified that a copy of his SOI, with his determination that no records exist, was sent to the Complainant on May 28, 2015.

### 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.

A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically or otherwise conveyed *to the appropriate custodian.*" N.J.S.A. 47:1A-5(g) (emphasis added). The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or *without any reasonable factual basis.*" N.J.S.A. 47:1A-7(e) (emphasis added).

Additionally, OPRA provides:

The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the addressor, and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following: (1) specific directions and procedures for requesting a record[.]

N.J.S.A. 47:1A-5(f).

Although a custodian is not permitted to deny a request for records under OPRA simply because the request is not on the agency's form, an agency does have the authority to dictate reasonable methods by which a requestor can transmit an OPRA request. Paff v. Bordentown Fire Dist, No. 2 (Burlington), GRC Complaint No. 2012-148 (Interim Order dated May 28, 2013).

In Roundtree v. NJ Dep't of State, GRC Complaint No. 2013-260 (June 2014), the GRC found as a threshold issue that a public agency could adopt a policy of not accepting e-mails, since that department accepted requests via hand delivery, regular mail, and OPRA Central. Under those circumstances the agency's policy did not create an unreasonable obstacle to transmitting a request. Thus there was no denial of access for refusing to accept and respond to an OPRA request, even though the Custodian was aware that the Complainant was attempting to file an OPRA request via e-mail.

Here, the Complainant used the official OPRA request form for the agency. The form explicitly states that a written request must be sent by mail, delivered in person, or submitted through a web enabled request form at [www.nj.gov/opra](http://www.nj.gov/opra). It also states the agency "[W]ill not accept a written request for access by fax or e-mail." The Custodian certified that he was unaware of the Complainant's requests until receiving the Denial of Access Complaint. He contends that the request was sent via e-mail to an address used by another section of his department, where he could find no evidence that the section ever received it, and deemed it lost. Despite that, after receiving the Complaint, he checked the agency's Charities Unit and could find no responsive records. Further, the Complainant did not dispute the Custodian's certification.

Accordingly, there was no denial of access where the Complainant sent the request via e-mail, a method of transmission which is not accepted by the agency, which was directed to another section rather than to the Custodian. Such a limitation on transmissions of OPRA requests is not an unreasonable obstacle to access. N.J.S.A. 47:1A-5(f); Paff, GRC 2012-148; Roundtree, GRC 2013-260. Furthermore, even had the requests been received, an exhaustive search by the Custodian yielded no responsive records. Moreover, there is no competent, credible evidence to refute the Custodian's certification that no responsive records exist. *See Pusterhofer v. NJ Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that there was no denial of access where the Complainant sent the request via e-mail, a method of transmission which is not accepted by the agency, and which was directed to another section rather than to the Custodian. Such a limitation on transmissions of OPRA requests is not an unreasonable obstacle to access. N.J.S.A. 47:1A-5 (f). Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-148 (Interim Order dated May 28, 2013); Roundtree v. NJ Dep't of State, GRC Complaint No. 2013-260 (June 2014). Furthermore, even had the requests been received, an exhaustive search by the Custodian yielded no responsive records. There is no competent, credible evidence to refute the Custodian's certification that no responsive records exist. *See Pusterhofer v. NJ Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).

Prepared By: Ernest Bongiovanni  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

January 19, 2016