



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**

**June 26, 2018 Government Records Council Meeting**

Robert Kovacs  
Complainant

Complaint No. 2015-169

v.

Union County  
Custodian of Record

At the June 26, 2018 public meeting, the Government Records Council (“Council”) considered the June 19, 2018 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 requested property deed. N.J.S.A. 47:1A-6. The Custodian is permitted to charge \$2.00 per page for the record sought in accordance with N.J.S.A. 22A:2-29 because it is a “fee prescribed by law” under N.J.S.A. 47:1A-5(b), and the Custodian would be physically creating the copy. Dugan v. Camden Cnty. Clerk’s Office, 376 N.J. Super. 271, 277 (App. Div. 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 June, 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: June 29, 2018**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
June 26, 2018 Council Meeting**

**Robert Kovacs<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-169**

v.

**Union County<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “Provide one copy of the last recorded property deed for the property known as 2173 Berwyn Street, Union, New Jersey, 07083.”

**Custodian of Record:** Joanne Rajoppi

**Request Received by Custodian:** May 15, 2015

**Response Made by Custodian:** May 15, 2015; May 29, 2015

**GRC Complaint Received:** June 11, 2015

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

**Request and Response:**

On May 10, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 15, 2015, the Custodian responded in writing, stating that the Complainant could obtain the record for free via the Custodian’s website. Alternatively, the Custodian stated that the Complainant could obtain a certified copy of the record for a fee of \$8.00 for the first page, and \$2.00 per page thereafter. Lastly, the Custodian stated that if the Complainant does not have access to the Internet or print, he may contact the office to determine the fee and provide a check for payment.

On May 20, 2015, the Complainant responded to the Custodian in writing. The Complainant stated that he does not need a certified copy of the record, and because he is an inmate, he does not have access to the Custodian’s website. Thus, the Complainant requested that the Custodian notify him of the actual cost of a regular copy, at \$0.15 per page. On May 29, 2015, the Custodian responded to the Complainant, providing the same information as previously stated in her May 15, 2015 response. However, the Custodian added that a non-certified hard copy of the record would cost \$2.00 per page, in accordance with statute.

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

<sup>2</sup> Represented by Brian P. Trelease, Esq., of Union County (Elizabeth, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

### Denial of Access Complaint:

On June 11, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s May 29, 2015 response was disrespectful, and is evidence of abuse of her position and an intentional attempt to deprive him of responsive records. The Complainant claimed that the Custodian is discriminating against him because he is an inmate and denying his rights under OPRA.

### Statement of Information:

On September 3, 2015, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that she received the Complainant’s OPRA request on May 15, 2015. The Custodian certified that on that same day, she responded in writing to the Complainant, explaining the methods in which the Complainant could access the record. The Custodian also certified that she responded to the Complainant on May 29, 2015, stating that hard copies of the records could be printed at \$2.00 per page in accordance with statute.

The Custodian argued that according to N.J.S.A. 22A:2-29, the Custodian is permitted to charge \$2.00 per page for certain records recorded or filed with the county clerk’s office, in this case property deeds. The Custodian relied upon Dugan v. Camden Cnty. Clerk’s Office, 376 N.J. Super. 271, 277 (App. Div. 2005), where the court held that “the clear object and policy of N.J.S.A. 22A:2-29 is to establish a uniform schedule of fees to be charged by all county clerks for the rendering of services in the performance of their official duties.” The Custodian stated that the issue was whether the custodian (the county clerk) could charge \$2.00 per page in accordance with N.J.S.A. 22A:2-29, or whether she was required to assess the copying fees enumerated under N.J.S.A. 47:1A-5(b). The Custodian stated that the court held that the custodian could only charge if she physically created the copy, as part of a service rendered. Therefore, the Custodian asserted that because she is being asked by the Complainant to create and deliver a physical copy of the record, she could assess the copying fee in accordance with N.J.S.A. 22A:2-29.

The Custodian concluded by stating that she properly responded to the Complainant, provided multiple avenues through which to obtain a copy of the deed, and therefore did not unlawfully deny access to the record.

## 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.

OPRA provides that “*except as otherwise provided by law . . .* the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size or smaller, and \$0.07 per legal size page or larger. N.J.S.A. 47:1A-5(b) (emphasis added).

It should be noted that the Dugan recognizes that N.J.S.A. 22A:2-29 prescribes a copy fee schedule as consistent with N.J.S.A. 47:1A-5(b). See 376 N.J. Super. at 276. However, the court held that the general premise behind the statute was to set a uniform fee schedule for clerks performing various services. Id. at 277. This included creating copies of records identified in the statute. Id. Thus, the court ruled that the custodian could not assess copying fees pursuant to N.J.S.A. 22A:2-29 because he did not physically create the copies.

Here, the Complainant sought a property deed, which is identified as amongst those documents listed under N.J.S.A. 22A:2-29. According to the Custodian’s SOI, two (2) records have been located in response to the Complainant’s OPRA request. Additionally, since the Complainant does not have online access, the Custodian would be required to physically create copies of the records. Thus, the Custodian was permitted to charge a copying fee pursuant to N.J.S.A. 22A:2-29. See Dugan, 376 N.J. Super. at 277.

Therefore, the Custodian did not unlawfully deny access to the requested property deed. N.J.S.A. 47:1A-6. The Custodian is permitted to charge \$2.00 per page for the record sought in accordance with N.J.S.A. 22A:2-29 because it is a “fee prescribed by law” under N.J.S.A. 47:1A-5(b), and the Custodian would be physically creating the copy. Dugan, 376 N.J. Super. at 277.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that the Custodian did not unlawfully deny access to the requested property deed. N.J.S.A. 47:1A-6. The Custodian is permitted to charge \$2.00 per page for the record sought in accordance with N.J.S.A. 22A:2-29 because it is a “fee prescribed by law” under N.J.S.A. 47:1A-5(b), and the Custodian would be physically creating the copy. Dugan v. Camden Cnty. Clerk’s Office, 376 N.J. Super. 271, 277 (App. Div. 2005).

Prepared By: Samuel A. Rosado  
Staff Attorney

June 19, 2018