



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

April 26, 2016 Government Records Council Meeting

Robert Kovacs
Complainant

Complaint No. 2015-170

v.

Manchester Township (Ocean)
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 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 the Custodian certified that the record responsive to the Complainant’s OPRA request consisted of a four (4) page Evidence Report, which was provided to the Complainant with no redactions. Despite the Complainant’s allegation that the report he received did not include two addresses, the records themselves contain no addresses. Therefore, no unlawful denial of access occurred.

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 26th Day of April, 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: May 2, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Robert Kovacs¹
Complainant**

GRC Complaint No. 2015-170

v.

**Manchester Township (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copy of Report for Case No. 1-13-000562, dated 7/22/2013.

Custodian of Record: Jodi Pellicano, Sabina T. Skibo

Request Received by Custodian: September 8, 2014

Response Made by Custodian: September 17, 2014; December 8, 2014

GRC Complaint Received: June 11, 2015

Background³

Request and Response:

On August 28, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 17, 2014, then-Custodian Pellicano responded to the request, quoting a 35-cent copy fee and stating that she would send the copies once payment was received.

On November 23, 2014, the Complainant wrote to the Custodian and enclosed a check in the requested amount. On December 8, 2014, the Custodian responded in writing, providing the responsive records.

Denial of Access Complaint:

On June 3, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that then-Custodian Pellicano “refused to provide the entire requested report” (emphasis added) and included neither the address of Anthony A. Lombardo nor the actual address of the incident. The Complainant wrote

¹ No legal representation listed on record.

² Represented by Christopher J. Dasti, Esq. (Forked River, 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.

that he interpreted the denial as “an act of discrimination because I am an inmate” and asserted that he paid for the records. The Complainant made no additional legal arguments.

Statement of Information:

On July 1, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that her office received the Complainant’s OPRA request on September 8, 2014, seeking records for police department case number 1-13-000562. The Custodian certified that her office responded in writing on September 17, 2014. The Custodian further averred that the responsive record consisted of a four (4) page Evidence Report with no redactions, as the case number provided pertained to evidence retrieved by the Police Department. The Custodian attached the responsive records to the SOI, showing that no redactions were made to the documents and that no address was listed in the documents. The Custodian argued that the Township fully responded to the Complainant’s OPRA request and that the Complaint should therefore be dismissed.

Additional Submissions:

On June 27, 2015, the Complainant wrote to the GRC, attaching a copy of a letter he sent to then-Custodian Pellicano on December 1, 2014, and noted that she “blacked out Anthony Lombardo’s address and date of birth” in a previous OPRA request.

On July 4, 2015, the Complainant wrote to the GRC, alleging that Township officials contacted “Mr. and Mrs. Lombardo, requesting they attend a meeting with them, and conspired how to deny me the records pertaining to them I requested” (*sic*).

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.

Here, the Custodian certified that the record responsive to the Complainant’s OPRA request consisted of a four (4) page Evidence Report, which was provided to the Complainant with no redactions. Despite the Complainant’s allegation that the report he received did not include two addresses, the records themselves contain no addresses. Therefore, no unlawful denial of access occurred.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian certified that the record responsive to the Complainant’s OPRA request consisted of a four (4)

page Evidence Report, which was provided to the Complainant with no redactions. Despite the Complainant's allegation that the report he received did not include two addresses, the records themselves contain no addresses. Therefore, no unlawful denial of access occurred.

Prepared By: Husna Kazmir
Staff Attorney

March 22, 2016⁴

⁴ This complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.