



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS

101 SOUTH BROAD STREET

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 27, 2017 Government Records Council Meeting

Mark Demitroff
Complainant

Complaint No. 2015-304

v.

Buena Vista Township (Atlantic)
Custodian of Record

At the June 27, 2017 public meeting, the Government Records Council (“Council”) considered the June 20, 2017 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 GRC has no authority over the integrity of the invoices provided by the Custodian in response to the Complainant’s August 13, 2015 OPRA request pursuant to Kwanzaa v. Dep’t of Corr., GRC Complaint No. 2004-167 (March 2005); Gillespie v. Newark Public Sch., GRC Complaint No. 2004-105 (November 2004); Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003); and Toscano v. NJ Dep’t of Labor, GRC Complaint No. 2005-59 (September 2005).
2. Because the Custodian certified in the SOI that she provided copies of all responsive records in the Township’s possession, the Custodian did not unlawfully deny access to the Complainant’s August 13, 2015 OPRA request. N.J.S.A. 47:1A-6. Additionally, there is no competent, credible evidence in the record to refute the Custodian’s certification. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Heyman (on behalf of Lisa Richford) v. Cnty. of Mercer, Office of the Cnty. Counsel, GRC Complaint No. 2011-249 (December 2012).

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 June, 2017

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 30, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 27, 2017 Council Meeting**

**Mark Demitroff¹
Complainant**

GRC Complaint No. 2015-304

v.

**Buena Vista Township (Atlantic)²
Custodial Agency**

Records Relevant to Complaint: Digital copies of:

- a) "Invoice #8708 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated February 17, 2010.
- b) Invoice #8826 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated March 30, 2010.
- c) Invoice #8876 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated April 20, 2010.
- d) Invoice #8944 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated May 19, 2010.
- e) Invoice #9041 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated June 22, 2010.
- f) Invoice #9141 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated August 18, 2010.
- g) Invoice #9228 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated September 22, 2010.
- h) Invoice #9257 – Schaeffer Nassar Scheidegg Consulting Engineers, LLC to Buena Vista Township, dated October 06, 2010."

"As several versions appear to exist, please provide documents responsive to each of the following time periods:

- 1) documents a-h as they appeared as originals in 2010.
- 2) documents a-h as they appeared in September 2014 (all versions).
- 3) documents a-h as they currently appear today."

Custodian of Record: Lisa Tilton

Request Received by Custodian: August 13, 2015

Response Made by Custodian: August 19, 2015

GRC Complaint Received: September 25, 2015

¹ No legal representation listed on record.

² Represented by Dominic P. DiYanni, Esq. of Eric M. Bernstein & Associates, LLC (Warren, NJ).

Background³

Request and Response:

On August 13, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian, seeking the above-mentioned records. On August 19, 2015, the Custodian responded in writing, providing responsive records via e-mail. The Custodian stated that the only available version of the invoices is from 2010 and that no other versions exist. The Custodian further noted that a request for these invoices was made in 2014 and that copies made in response to the 2014 request were provided here. However, the Custodian explained that the computer database used to reproduce the invoices automatically identified the Township Administrator employed in 2014 as the point of contact, rather than the Township Administrator employed in 2010, when the invoices were originally created.

On August 19, 2015, the Complainant replied to the Custodian’s response, asking for clarification on the provided records. Generally, the Complainant asked whether the invoices received were accurate depictions of the 2010 invoices. On August 25, 2015, the Custodian responded, telling the Complainant that she explained everything she knew about the invoice copies on August 19, 2015, and did not have time to respond to every follow up inquiry the Complainant had, given the history between the parties. The Complainant replied that same day, calling to attention a discrepancy in the invoices, where it identifies a Township Administrator who was not employed by Buena Vista Township (“BVT”) until three (3) years after the invoices were created.

Denial of Access Complaint:

On September 25, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian provided him with eight (8) “unambiguously flawed” records in response to his August 13, 2015 OPRA request. The Complainant alleged that the records are suspect, since they were copies of a response to a 2014 OPRA request, rather than from the original documents, and that the invoices listed Susan Quiñones as the point of contact, despite not having been employed by BVT as the Township Administrator until 2013.

Statement of Information:

On October 21, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 13, 2015. The Custodian certified that her search included reaching out to BVT’s Engineer, who would likely possess the type of records sought. The Custodian certified that she responded in writing on August 19, 2015, providing eight (8) one-page invoices to the Complainant. The Custodian also certified that she was informed by the Engineer that while he did not have the original hard

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.

copies of the invoices, he was able to reprint digital copies from his computer. The invoices were digitized in response to a prior OPRA request in 2014. However, the Engineer told the Custodian that at the time they were created, the computer software listed the most recently identified Township Administrator as point of contact, rather than the Township Administrator employed in 2010.

The Custodian certified that she informed the Complainant of the inaccurate identity of the Township Administrator within the invoices as part of her initial response to his OPRA request. She also certified that no other versions of the invoices exist and that the invoices provided were as they were created in 2010. The Custodian asserted her belief that she provided the Complainant with a clear explanation for the discrepancy surrounding the invoices and that there was no unlawful denial of access. Moreover, the Custodian stated that if the requestor felt that the records were inaccurate or incomplete, the GRC is not the forum to bring such an allegation.⁴

Additional Submissions:

On March 21, 2016, the Complainant responded to the Custodian's SOI, stating that the Custodian's explanation for the discrepancy is invalid. The Complainant argued that the 2014 OPRA request was made on September 8, 2014, but Susan Quiñones left her position as Township Administrator in July 2014. Therefore, the identified point of contact could not have been Susan Quiñones, according to the Complainant. As evidence, the Custodian attached copies of invoices dated August 14, 2014, listing Jody Alessandrine as the point of contact.

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 she timely produced all responsive records to the Complainant's August 13, 2015 OPRA request and that no other responsive records exist. The Complainant contended that the invoices are fraudulent and filed the instant complaint to challenge the validity of the records. However, the Council has long held that it does not have the authority over the content of a record. See Kwanzaa v. Dep't of Corr., GRC Complaint No. 2004-167 (March 2005) (the GRC does not have authority over the content of a record); Gillespie v. Newark Public Sch., GRC Complaint No. 2004-105 (November 2004) (the GRC does not have the authority to adjudicate the validity of a record); Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003) (the integrity of a requested record is not within

⁴ The Custodian requested that the GRC explore the possibility of allowing the Borough to seek fees and costs from the Complainant for frivolous litigation. The GRC notes that OPRA's fee shifting provision applies only to complainants. N.J.S.A. 47:1A-6.

the GRC's authority to adjudicate); Toscano v. NJ Dep't of Labor, GRC Complaint No. 2005-59 (September 2005) (the GRC does not have authority over the condition of records provided by a custodian).

Therefore, the GRC has no authority over the integrity of the invoices provided by the Custodian in response to the Complainant's August 13, 2015 OPRA request pursuant to Kwanzaa, supra; Gillespie, supra; Katinsky, supra; and Toscano, supra.

Moreover, because the Custodian certified in the SOI that she provided copies of all responsive records in the Township's possession, the Custodian did not unlawfully deny access to the Complainant's August 13, 2015 OPRA request. N.J.S.A. 47:1A-6. Additionally, there is no competent, credible evidence in the record to refute the Custodian's certification. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005) (holding that the Custodian did not unlawfully deny access to Complainant's OPRA request because the Custodian provided all records that existed); Heyman (on behalf of Lisa Richford) v. Cnty. of Mercer, Office of the Cnty. Counsel, GRC Complaint No. 2011-249 (December 2012).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The GRC has no authority over the integrity of the invoices provided by the Custodian in response to the Complainant's August 13, 2015 OPRA request pursuant to Kwanzaa v. Dep't of Corr., GRC Complaint No. 2004-167 (March 2005); Gillespie v. Newark Public Sch., GRC Complaint No. 2004-105 (November 2004); Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003); and Toscano v. NJ Dep't of Labor, GRC Complaint No. 2005-59 (September 2005).
2. Because the Custodian certified in the SOI that she provided copies of all responsive records in the Township's possession, the Custodian did not unlawfully deny access to the Complainant's August 13, 2015 OPRA request. N.J.S.A. 47:1A-6. Additionally, there is no competent, credible evidence in the record to refute the Custodian's certification. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Heyman (on behalf of Lisa Richford) v. Cnty. of Mercer, Office of the Cnty. Counsel, GRC Complaint No. 2011-249 (December 2012).

Prepared By: Samuel A. Rosado
Staff Attorney

June 20, 2017