



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

April 26, 2016 Government Records Council Meeting

Frank Delli Santi
Complainant
v.
Frankford Township (Sussex)
Custodian of Record

Complaint No. 2015-72

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the April 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 because the Custodian made the requested records available to the Complainant within the statutory period of seven (7) business days following the request, contingent upon payment of the appropriate copying costs, the Custodian’s response was timely and appropriate. N.J.S.A. 47:1A-5b; Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) and Ortiz v. NJ Dep’t of Corr., GRC Complaint No. 2007-101 (November 2008). The Custodian was not required to provide the requested records until receipt of payment. Coulson v. Town of Kearney Fire Dep’t, GRC Complaint No. 2013-322 (July 2014).

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**

**Frank Delli Santi¹
Complainant**

GRC Complaint No. 2015-72

v.

**Frankford Township (Sussex)²
Custodial Agency**

Records Relevant to Complaint:

For pick up, paper copies of:

1. 2005 letter to Bill Paterson and Robert Hoduluch acknowledging that Edgemont Campground is a mobile home park with 22 sites.
2. Letter from Bill Paterson saying Edgemont will remain a mobile home park.
3. The minutes of the Zoning Board meeting “which changed the Edgemont property to a campground during the years 2005-2008.”
4. The license issued “during these dates of 2006, 2007 and 2008” allowing Edgemont to be a legal campground in this state.
5. Board of Health approvals to operate a campground legally in 2005-2008.
6. Land use records for 2005-2009.
7. All township meetings that pertained to Edgemont’s Zoning and Use during the years.
8. “If Edgemont was never licensed prior to 2009, what was the property’s zoning status?”

Custodian of Record: Patricia Bussow

Request Received by Custodian: July 9, 2014

Response Made by Custodian: July 18, 2014

GRC Complaint Received: March 16, 2015

Background³

Request and Response:

On July 8, 2014, the Complainant submitted an Open Public Records Act (“OPRA”)

¹ No legal representation listed on record.

² Represented by Ken Benbrook of Benbrook & Benbrook, LLC (Clinton, NJ). Previously represented by Glenn C. Kienz, Esq., Weiner Lesniak, LLP (Parsippany, 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.

request to the Custodian seeking the above-mentioned records. The Custodian responded to the Complainant in writing on July 16, 2014. The Custodian's written response granted access to the requested records. On July 18, 2014, the seventh (7th) business day following the Custodian's receipt of the request, the Custodian arranged with the Complainant to pick up the records at her office on July 21, 2014. The Complainant did not appear at the arranged time but eventually did appear several months later, on January 13, 2015. When the Complainant appeared on that day to pick up the records, an argument arose soon after the Complainant was asked to pay 19-cents for copying fees. The argument resulted in the police being called and the Complainant leaving before the police arrived. The Complainant never paid the 19-cents nor returned to collect the records.

Denial of Access Complaint:

On March 16, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). With his submission, the Complainant included a copy of the Custodian's July 16 response. In asserting his Complaint, the Complainant alleged that he was threatened with police action in the Township Building. He further asserted that the Custodian "has denied me access to records, whether or not I received them already. I must pay for copies, so what I request must be granted." He also said he was "denied information on prior [o]ccasions . . ."⁴

Statement of Information:

On March 31, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on July 9, 2014. She also certified that the Complainant marked the request form to specify that the records would be picked up. She further stated that she scheduled a time with the Complainant so that he could pick up the requested records, but the Complainant did not appear for the scheduled meeting, despite his being notified that the documents would be ready for him. She further stated that when the Complainant appeared at the Municipal building months later, an argument arose after the Complainant was asked to pay the statutory fee for copying the records. According to the Custodian, the Complainant "became belligerent" and "made threats against various staff members." The Custodian averred that an "argument became heated, police were called as a result, and the Complainant left the building before police arrived." The Custodian further certified that the Complainant has never returned to pay for the copies and collect the records. The Custodian certified that the "materials requested . . . are available and continue to be available. . ." to the Complainant.

Analysis

Timeliness

OPRA provides that government records made, maintained, kept on file, or received by a

⁴ The Complainant referred to the request at issue as the "June 9, 2014" request. However, the request form was signed and apparently dated by the Complainant on "July 8, 2014." The Complaint also stated that he submitted another OPRA request on an unknown date in February 2015 but provided no proof of same.

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 further provides that “[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation.” N.J.S.A. 47:1A-5b.

In Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), the custodian responded to the complainant’s February 6, 2005 OPRA request by stating that the requested record will be made available upon payment of copying costs. The Council held that:

“the Custodian is . . . not required to release said records until payment is received pursuant to N.J.S.A. 47:1A-5.b., Santos v. NJ State Parole Board, GRC Case No. 2004-74 (August 2004) and Cuba v. Northern State Prison, GRC Case No. 2004-146 (February 2005).”

In Ortiz v. NJ Dep’t of Corr., GRC Complaint No. 2007-101 (November 2008), the Council referred to Paff in reaffirming that the custodian was “not required to release the requested records until payment is received. . .” Id. at pg. 8. The Council subsequently held in Leak v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2007-148 (June 2009) that the custodian had complied in part with the Council’s February 25, 2009 Interim Order “by advising that the requested records would be provided upon payment of copying costs. . .” Id. citing N.J.S.A. 47:1A-5b.; Mejias v. NJ Dep’t of Corr., GRC Complaint No. 2007-181 (July 2008); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (May 2006).

Finally, in Coulson v. Town of Kearney Fire Dep’t, GRC Complaint No. 2013-322 (July 2014), the custodian informed the complainant that the requested records were available for retrieval upon payment of costs. However, the custodian received no payment. Therefore, the custodian did not unlawfully deny access, as the copying costs had to be paid before the custodian was required to provide the records.

Here, the Custodian contended that she provided the responsive materials and made them available for collection on July 18, 2014, the seventh (7th) business day following the request. She certified that the Complainant did not appear at the time he had arranged in order to collect the records. However, when the Complainant finally did arrive to collect the records in January 2015, a heated argument ensued after the Custodian requested payment of the statutory fees for copying. The Complainant then left the municipal building and never returned. The evidence of record indicates that the Complainant has not since offered to pay for the records or request delivery in a different format than he originally requested. Consequently, the records remain unpaid and unclaimed. Because the Complainant chose not to take delivery of the records, the Custodian could not have unlawfully denied the Complainant access to those records. Absent a denial of access, the GRC sees no need to review either the validity of the requests or the Custodian’s production.

The Complainant does not assert that he made payment, nor does he assert that the Custodian waived the payment.

Therefore, because the Custodian made the requested records available to the Complainant within the statutory period of seven (7) business days following the request, contingent upon payment of the appropriate copying costs, the Custodian's response was timely and appropriate. N.J.S.A. 47:1A-5b; Paff, GRC 2006-54; and Ortiz, GRC 2007-10. The Custodian was not required to provide the requested records until receipt of payment. Coulson, GRC 2013-322.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian made the requested records available to the Complainant within the statutory period of seven (7) business days following the request, contingent upon payment of the appropriate copying costs, the Custodian's response was timely and appropriate. N.J.S.A. 47:1A-5b; Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) and Ortiz v. NJ Dep't of Corr., GRC Complaint No. 2007-101 (November 2008). The Custodian was not required to provide the requested records until receipt of payment. Coulson v. Town of Kearney Fire Dep't, GRC Complaint No. 2013-322 (July 2014).

Prepared By: Ernest Bongiovanni
Staff Attorney

April 19, 2016