



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

December 15, 2015 Government Records Council Meeting

Chandos F. Caldwell
Complainant

Complaint No. 2015-76

v.

Township of East Brunswick (Middlesex)
Custodian of Record

At the December 15, 2015 public meeting, the Government Records Council (“Council”) considered the December 8, 2015 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 Complainant is neither the requestor of the records relevant to the complaint nor the requestor’s legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records. Therefore, the complaint is materially defective and should be dismissed. N.J.S.A. 47:1A-6; Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep’t of Health & Human Services (Essex), 2013-302 (October 2014); DeYoung v. Borough of Folsom (Atlantic), GRC Complaint No. 2015-311 (November 2015).

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 15th Day of December, 2015

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: December 17, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 15, 2015 Council Meeting**

**Chandos F. Caldwell¹
Complainant**

GRC Complaint No. 2015-76

v.

**Township of East Brunswick (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Information regarding all township studies-past and current-on a water tower to be erected “west side of the turnpike.”

Custodian of Record: Nennette Perry

Request Received by Custodian: March 3, 2015

Response Made by Custodian: January 21, 2015; March 27, 2015

GRC Complaint Received: March 20, 2015

Background³

Request and Response:

On January 20, 2015, Chester Karr, DDS, submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 21, 2015, the Custodian replied to Dr. Karr, stating that she found no requested records on file. On February 3, 2015, the Custodian received a duplicate letter from Dr. Karr, which had been sent to the Mayor. The Custodian then made a second search for possible records. On March 27, 2015, the Custodian sent another letter to Dr. Karr, informing him that a second search produced no responsive records.

Denial of Access Complaint:

On March 20, 2015, the Complainant, who is a neighbor of Dr. Karr, filed a Denial of Access Complaint with the Government Records Council (“GRC”), citing an unlawful denial of access. The Complainant asserted that Dr. Karr filed the OPRA request on behalf of their neighborhood and that he and his neighbors needed the requested information to help them oppose the water tower project.

¹ No legal representation listed on record.

² Represented by Jean Cipriani, Esq. of Gilmore & Monahan, Toms 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.

Statement of Information:

On April 2, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received a request from the Complainant’s neighbor about the same subject matter and had responded to that request twice, stating that no responsive records existed in her office. She further certified that she never received an OPRA request from the Complainant.

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 also provides that “[a] person who is denied access to a government record by the custodian of the record . . . may . . . file a complaint with the Government Records Council. . . . *The right to institute any proceeding under this section shall be solely that of the requestor.*” N.J.S.A. 47:1A-6 (Emphasis added).

In Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep’t of Health & Human Services (Essex), 2013-302 (October 2014), the Council determined that because the complainant was neither the requestor of the records relevant to the complaint nor the requestor’s legal representative, she has no standing to pursue an action for unlawful denial of access pursuant to N.J.S.A. 47:1A-6.

In the instant matter, the Complainant alleged that the Custodian unlawfully denied access to records that Dr. Karr, a neighbor of the Complainant, sought via an OPRA request. It is important to note that the Complainant is not the one who filed the OPRA request at issue. Moreover, in filing the Denial of Access Complaint, the Complainant provided no indication that he was acting as Dr. Karr’s legal representative. OPRA clearly provides that only a requestor who was denied access to a government record has standing to pursue an action for unlawful denial of access. N.J.S.A. 47:1A-6. See also DeYoung v. Borough of Folsom (Atlantic), GRC Complaint No. 2015-311 (November 2015).

Accordingly, because the Complainant is neither the requestor of the records relevant to the complaint nor the requestor’s legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records. Therefore, the complaint is materially defective and should be dismissed. N.J.S.A. 47:1A-6; Maxam, GRC 2013-302 (October 2014); DeYoung, GRC 2015-311.

Conclusions and Recommendation

The Executive Director respectfully recommends the Council find that because the

Complainant is neither the requestor of the records relevant to the complaint nor the requestor's legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records. Therefore, the complaint is materially defective and should be dismissed. N.J.S.A. 47:1A-6; Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep't of Health & Human Services (Essex), 2013-302 (October 2014); DeYoung v. Borough of Folsom (Atlantic)., GRC Complaint No. 2015-311 (November 2015).

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

December 8, 2015