



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 27, 2018 Government Records Council Meeting

Frank Berman
Complainant

Complaint No. 2016-206

v.

Township of Rockaway (Morris)
Custodian of Record

At the February 27, 2018 public meeting, the Government Records Council (“Council”) considered the February 20, 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 Complainant’s June 14, 2016 OPRA request. N.J.S.A. 47:1A-6. The evidence in the record demonstrates that the e-mail addresses receiving political communications identified by the Complainant were collected and maintained by an elected official’s campaign committee, and neither obtained nor in possession by the Township. Mayer v. Borough of Tinton Falls (Monmouth), GRC Complaint No. 2008-245 (Interim Order dated April 8, 2010).

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 February, 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: March 2, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
February 27, 2018 Council Meeting**

**Frank Berman¹
Complainant**

GRC Complaint No. 2016-206

v.

**Township of Rockaway (Morris)²
Custodial Agency**

Records Relevant to Complaint: “Please provide all email address[sic] & names used by Councilman Jedynek to distribute his Jeremy Jedynek Township Councilman ‘Advocating for lower taxes & Conservative Values Newsletter’ starting Jan 1, 2015 to present. This request includes all metadata.”

Custodian of Record: Susan Best

Request Received by Custodian: June 14, 2016

Response Made by Custodian: June 15, 2016; June 22, 2016

GRC Complaint Received: July 25, 2016

Background³

Request and Response:

On June 14, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 15, 2016, the Custodian forwarded an e-mail sent to Councilman Jeremy Jedynek (“Councilman Jedynek”), seeking the requested records by no later than Thursday, June 23, 2016. On June 22, 2016, the Custodian forwarded a second e-mail sent to Councilman Jedynek, reminding him of the deadline to respond to the OPRA request and requesting any responsive records before the deadline. On June 23, 2016, Councilman Jedynek responded to the Custodian, stating that no responsive records exist which are entitled “Advocating for lower taxes & Conservative Values Newsletter.” Further, that any record resembling such title is under the control and maintenance of a political campaign committee, which is not subject to OPRA, nor are the records created by such entity. Additionally, Councilman Jedynek stated that the e-mail addresses and names maintained by the political campaign committee are not government records subject to OPRA. Therefore, Councilman

¹ No legal representation listed on record.

² Represented by John M. Iacofano, Esq. of Iacofano & Perrone (Morristown, 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.

Jedynak stated that no responsive records exist. This response was forwarded to the Complainant by the Custodian on an unknown date.

Denial of Access Complaint:

On July 25, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian forwarded each of the responses she made to Councilman Jedynak regarding the Complainant’s OPRA request, as well as the Councilman’s June 23, 2016 response.

The Complainant also noted that Councilman Jedynak was elected as Councilman-at-Large for a four year term on November 3, 2015. Additionally, the Complainant stated that the letter at issue in the OPRA request was delivered on May 18, 2016, thereby asserting that the letter was not submitted during an election year.

Statement of Information:

On August 26, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 14, 2016. The Custodian certified that the requested records would not be in the control of the agency, and thus reached out to Councilman Jedynak on June 15, 2016 and June 22, 2016 to search for and provide any responsive records. The Custodian certified that she received Councilman Jednyak’s response on June 23, 2016, wherein he refused to provide access to the records. The Custodian stated that she personally handed the Complainant a copy of Councilman Jednyak’s June 23, 2016 response.

The Custodian argued that any list of names and e-mail addresses of those receiving Councilman Jednyak’s newsletter would be in the Councilman’s custody and control.

Additional Submissions:

On October 24, 2016 and January 27, 2018, the Complainant forwarded e-mails of additional newsletters purported to come from Councilman Jedynak, similar to the one provided to his complaint.

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.

In Mayer v. Borough of Tinton Falls (Monmouth), GRC Complaint No. 2008-245 (Interim Order dated April 8, 2010), the GRC discussed the issues of e-mail addresses collected by an

elected official and used them to distribute political campaign material. In that case the borough's website contained a solicitation for e-mail addresses for the use of distributing the borough's newsletter. Additionally, the custodian's newsletter gave the impression of being an official newsletter from the borough, entitled "Tinton Falls E-Mail Newsletter," and included the elected official's full office title and borough hall contact information. Although there was disagreement as to whether the solicitation was officially sanctioned by the borough, the Council held that because the solicitation was posted on the borough's website for more than two (2) years, the e-mail addresses obtained therein are government records under OPRA.

The facts in the current matter differ from those in Mayer, 2008-245. Here, the Complainant did not provide evidence or even asserted that the e-mail addresses held by Councilman Jedynak were obtained via Rockaway Township's ("Township") website or through the use of Township resources. Additionally, the newsletters provided by the Complainant do not suggest that it is official correspondence from the Township. The newsletter was not sent by an official e-mail address account, and at the bottom of the letter it states, "Copyright © 2016 Jedynak for Council, All rights reserved. You are receiving this email because you opted in or were interested in receiving information about upcoming political events and issues." Whereas in Mayer, 2008-245, the newsletter provided contact information to the borough hall, the newsletter in this matter contains the mailing address to what appears to be Councilman Jedynak's campaign office in Boonton, NJ. The totality of the circumstances shows that the newsletter was explicitly political in nature, and that the e-mail addresses receiving the newsletter were obtained and maintained by Councilman Jedynak's campaign committee, and not a public agency. Therefore, the e-mail addresses requested by the Complainant are not government records under N.J.S.A. 47:1A-1.1.

Accordingly, the Custodian did not unlawfully deny access to the Complainant's June 14, 2016 OPRA request. N.J.S.A. 47:1A-6. The evidence in the record demonstrates that the e-mail addresses receiving political communications identified by the Complainant were collected and maintained by an elected official's campaign committee, and neither obtained nor in possession by the Township. Mayer, 2008-245.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's June 14, 2016 OPRA request. N.J.S.A. 47:1A-6. The evidence in the record demonstrates that the e-mail addresses receiving political communications identified by the Complainant were collected and maintained by an elected official's campaign committee, and neither obtained nor in possession by the Township. Mayer v. Borough of Tinton Falls (Monmouth), GRC Complaint No. 2008-245 (Interim Order dated April 8, 2010).

Prepared By: Samuel A. Rosado
Staff Attorney

February 20, 2018