



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

Lt. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Kafele Bomani
Complainant

Complaint No. 2016-257

v.

Atlantic County Prosecutor's Office
Custodian of Record

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 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 has borne his burden of proof that no unlawful denial of access occurred regarding the Complainant's August 20, 2016 OPRA request. Specifically, the Custodian timely requested clarification of the request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order Dated March 22, 2013); Herron v. New Jersey Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

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 18th Day of December, 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: December 20, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting**

**Kafele Bomani¹
Complainant**

GRC Complaint No. 2016-257

v.

**Atlantic County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Prosecutor File No. 07004964, State v. Kafele Bomani.

Custodian of Record: Sevan Biramian
Request Received by Custodian: August 24, 2016
Response Made by Custodian: August 31, 2016
GRC Complaint Received: September 15, 2016

Background³

Request and Response:

On August 20, 2016, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On August 31, 2016, the Custodian responded in writing, stating the requested file contained many documents exempt from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1. The Custodian asked the Complainant to clarify which specific records he desired.

Denial of Access Complaint:

On September 15, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant did not elaborate further on the circumstances surrounding his OPRA request, but included a copy of the August 31, 2016 response to the Custodian.

Statement of Information:

On October 6, 2016, the Custodian filed a Statement of Information ("SOI"). The

¹ No legal representation listed on record.

² No legal representation listed on record.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Custodian certified that he received the Complainant's OPRA request on August 24, 2016. The Custodian also certified that he located four (4) folders containing documents related to the file identified by the Complainant. The Custodian then certified that he responded in writing on August 31, 2016, asserting that the requested file contained numerous records that were exempt from disclosure as criminal investigatory records. Furthermore, the Custodian contended that the file itself was voluminous, and requested clarification from the Complainant on which documents he wanted to receive.

The Custodian then certified that he did not receive a follow-up from the Complainant in response to his request for clarification.

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 Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 2013), the Council determined that the custodian bore her burden of proving a lawful denial of access to the requested records because she sought clarification of the complainant's request and the complainant provided no clarification. See also Herron v. New Jersey Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

The evidence in the record demonstrates that the Custodian responded to the Complainant's OPRA request on August 31, 2016, stating that the requested file contained many documents that were exempt from disclosure as criminal investigatory records. N.J.S.A. 47:1A-1.1. The record also shows that the Complainant received the Custodian's response, as a copy was included in the complaint. Additionally, there is no evidence in the record demonstrating that the Complainant submitted a clarification or explained why none was submitted.

Accordingly, the Custodian has borne his burden of proof that no unlawful denial of access occurred regarding the Complainant's August 20, 2016 OPRA request. Specifically, the Custodian timely requested clarification of the request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Schilling, GRC 2013-293; Herron, GRC 2011-363; Moore, GRC 2005-80.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian has borne his burden of proof that no unlawful denial of access occurred regarding the Complainant's August 20, 2016 OPRA request. Specifically, the Custodian timely requested clarification of the request

in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order Dated March 22, 2013); Herron v. New Jersey Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

Prepared By: Samuel A. Rosado
Staff Attorney

December 11, 2018