



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**February 26, 2019 Government Records Council Meeting**

Elouise McDaniel  
Complainant

Complaint No. 2017-09

v.

Township of Irvington (Essex)  
Custodian of Record

At the February 26, 2019 public meeting, the Government Records Council (“Council”) considered the February 19, 2019 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s November 1, 2016 OPRA request seeking the expense for the mailing concerning Pillar College. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 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 26<sup>th</sup> Day of February, 2019

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 1, 2019**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
February 26, 2019 Council Meeting**

**Elouise McDaniel<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-9**

v.

**Township of Irvington (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “What was the expense for the mailing concerning Pillar College and who paid for it?”

**Custodian of Record:** Harold Wiener

**Request Received by Custodian:** November 1, 2016

**Response Made by Custodian:** November 28, 2016

**GRC Complaint Received:** January 12, 2017

**Background<sup>3</sup>**

**Request and Response:**

On November 1, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 28, 2016, Althea Headley (“Ms. Headley”), on behalf of the Custodian, responded in writing stating that no purchase orders or invoices could be located regarding the Pillar College mailer.

**Denial of Access Complaint:**

On January 12, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that she went to the Township of Irvington (“Township”) Town Hall on November 1, 2016 and filled out an OPRA request form. The Complainant included a copy of correspondence dated November 1, 2016 from the Custodian to Ms. Headley and the Business Administrator, informing them of the OPRA request. The Custodian also stated that the recipients respond to the Complainant directly.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Evelyn Akushi-Onyeani, Esq., Assistant Township Attorney (Irvington, NJ).

<sup>3</sup> 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.

### Statement of Information:

On February 22, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 1, 2016. The Custodian certified that Ms. Headley responded in writing on November 28, 2016.

The Custodian reiterated what Ms. Headley told the Complainant in her correspondence. Namely, that Ms. Headley reviewed all printing bills and did not locate any purchase orders or invoices for printing materials regarding Pillar College.

### 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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant’s OPRA request sought the “expense” made for a mailing concerning Pillar College. Ms. Headley, on behalf of the Custodian, responded directly to the Complainant. Ms. Headley was a Qualified Purchasing Agent and worked in the Township’s Finance & Revenue Administration. Thus, Ms. Headley would have the requisite knowledge and access to conduct a search for responsive records. The Custodian certified in the SOI that no responsive records existed. Additionally, there is no evidence in the record to refute that the Custodian did not possess the responsive records.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s November 1, 2016 OPRA request seeking the expense for the mailing concerning Pillar College. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s November 1, 2016 OPRA request seeking the expense for the mailing concerning Pillar College. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado  
Staff Attorney

February 19, 2019