



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 25, 2019 Government Records Council Meeting

Stacie Percella
Complainant

Complaint No. 2017-111

v.

City of Bayonne (Hudson)
Custodian of Record

At the June 25, 2019 public meeting, the Government Records Council (“Council”) considered the June 18, 2019 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 April 3, 2017 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that he disclosed all records responsive to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint Nos. 2009-156, 2009-157, 2009-158 (Interim Order dated April 28, 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 25th Day of June 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: June 28, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
June 25, 2019 Council Meeting**

**Stacie Percella¹
Complainant**

GRC Complaint No. 2017-111

v.

**City of Bayonne (Hudson)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of: “New hires as of 3/1/17 – present. All employees. Police, fire, civilian. Date of hire, PT, FT, Seasonal, date of hire, department, salary, title. PT/Seasonal hours per week.”

Custodian of Record: Robert F. Sloan

Request Received by Custodian: April 3, 2017

Response Made by Custodian: April 7, 2017

GRC Complaint Received: May 10, 2017

Background³

Request and Response:

On April 3, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 7, 2017, Christina LaGatta (“Ms. LaGatta”), on behalf of the Custodian, responded in writing providing a one (1) page spreadsheet detailing two (2) civilian employees hired on March 2, 2017 and March 20, 2017.

On April 10, 2017, the Complainant e-mailed the Custodian, asserting that the response provided was incomplete. The Complainant asserted that she was an “avid OPRA requester” and requested information “as written in the [Government Records Council’s (“GRC”)] instructions.” The Complainant requested that the Custodian provide a full response within the seven (7) business day time frame, or else she would have to file a complaint with the GRC. The Complainant forwarded the response to Madelene Medina (“Ms. Medina”), after receiving an out-of-office message from the Custodian.

On April 11, 2017, Ms. Medina e-mailed the Complainant stating that the Custodian was

¹ No legal representation listed on record.

² Represented by John F. Coffey, II, Esq. (Bayonne, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

on vacation and would return on April 17, 2017. Ms. Medina also stated that she would forward the Complainant's correspondence to the Custodian upon his return.

On April 17, 2017, the Complainant e-mailed the Custodian, restating that the response to her OPRA request was incomplete, and requested that the Custodian explain why the response was incomplete before she filed a complaint.

Denial of Access Complaint:

On May 10, 2017, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant asserted that the response provided to her was incomplete, as she sought information on all new hires during that time period. The Complainant argued that the response did not include any new hires from the police or fire departments.

The Complainant asserted that a hiring freeze for the City of Bayonne ("City") was implemented by municipal executive order on May 16, 2016 that was to last for one (1) year. The Complainant argued that the City has disregarded the executive order by hiring new personnel.

The Complainant included a copy of a news article dated March 22, 2017, with the headline, "Bayonne Police Department promotes 2 sergeants, brings in new recruit." The Complainant contended that the Custodian's response did not include this recruit, Diego Casais ("Officer Casais"), who was sworn in on March 9, 2017 according to the article.

Statement of Information:

On May 26, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on April 3, 2017. The Custodian certified that his search included providing the request to the City's Personnel Department ("Personnel"). The Custodian certified that Personnel reviewed the personnel and payroll files of civilian, fire, and police departments to determine whether any employee matched the criteria described by the request. The Custodian certified that a Microsoft® Excel spreadsheet was prepared based upon the review. The Custodian certified that on his behalf, Ms. LaGatta responded in writing to the request on April 7, 2017.

The Custodian asserted that the two (2) employees identified in the spreadsheet were the only individuals hired by the City in any capacity between March 1, 2017 and April 3, 2017. The Custodian acknowledged the Complainant's inclusion of the March 22, 2017 news article suggesting that the City hired a police officer during the slated time period. The Custodian contended that Officer Casais was hired by the City effective September 7, 2016 and included a spreadsheet of police personnel as a "Supplemental Attachment." The Custodian thus argued that the April 7, 2017 response was complete.

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 Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint Nos. 2009-156, 2009-157, 2009-158 (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. The Council held that the custodian’s certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian’s burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

In the instant matter, the Complainant’s OPRA request sought various information regarding all employees hired by the City between March 1, 2017 and April 3, 2017. The request spanned all City departments. The Custodian disclosed a spreadsheet identifying two (2) employees hired during the requested time period. In the Denial of Access Complaint, the Complainant asserted that the spreadsheet was incomplete, and included a news article purporting to show that the City hired a police officer during the requested period as evidence. In the SOI, the Custodian certified that the spreadsheet comprised all employees satisfying the request parameters.

Upon review of the evidence of record and arguments submitted by both parties, the GRC is satisfied that the Custodian provided all available records. Specifically, the Complainant provided a copy of a news article highlighting the City’s hiring of a police officer. The news article was dated March 22, 2017, and within the article it was stated that the officer was sworn in on March 9, 2017. As this date falls within the request’s time period, the Complainant offered the article as evidence that the Custodian’s response was incomplete. However, the Custodian provided as an attachment a spreadsheet of all police personnel employed by the City, which indicates that the recruit mentioned in the article was hired on September 7, 2016, well outside the requested time period. Thus, the evidence and certifications presented to the GRC support a conclusion that no unlawful denial of access occurred.

Therefore, the Custodian did not unlawfully deny access to the Complainant’s April 3, 2017 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that he disclosed all records responsive to the Complainant. Danis, GRC 2009-156, *et seq.*

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant’s April 3, 2017 OPRA request. N.J.S.A. 47:1A-6.

Specifically, the Custodian certified, and the record reflects, that he disclosed all records responsive to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint Nos. 2009-156, 2009-157, 2009-158 (Interim Order dated April 28, 2010).

Prepared By: Samuel A. Rosado
Staff Attorney

June 18, 2019