



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 25, 2018 Government Records Council Meeting

Ernest Risha
Complainant

Complaint No. 2017-12

v.

Logan Township (Gloucester)
Custodian of Record

At the September 25, 2018 public meeting, the Government Records Council (“Council”) considered the September 18, 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 because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging an unlawful denial of access to the requested records, he failed to state a claim on which the Council could grant relief. See Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

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 September, 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: September 27, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
September 25, 2018 Council Meeting**

**Ernest Risha¹
Complainant**

GRC Complaint No. 2017-12

v.

**Logan Township (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: On-site inspection of “[a]ny/all documents (electronic included, such as e-mails)” prepared by representatives of the Environmental Commission (“Commission”), Logan Township (“Township”) Solicitor, or any outside contractor to/from the “[Township] Board” regarding the “BROS Superfund Site” from 2010 through the present.

Custodian of Record: Linda Oswald

Request Received by Custodian: September 27, 2016

Response Made by Custodian: October 12, 2016

GRC Complaint Received: January 18, 2017

Background³

Request and Response:

On September 27, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 12, 2016, the tenth (10th) business day after receipt of the OPRA request,⁴ the Custodian responded in writing apologizing for the delay, noting that the Commission Secretary (“Secretary”) was a part-time position. The Custodian stated that the Secretary advised that no records or documents responsive to the Complainant’s request existed. The Custodian noted that the Secretary had the same monthly BROS reports previously reviewed by the Complainant in response to a “previous request.”

¹ No legal representation listed on record.

² Represented by Brian J. Duffield, Esq., of the Law Office of Brian J. Duffield (Mullica Hill, 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.

⁴ The GRC notes that the Custodian’s response resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC will not address this issue as the Complainant did not raise it in his Denial of Access Complaint.

Denial of Access Complaint:

On January 18, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant failed to provide any argument or support for why he believed he was unlawfully denied access to the records.

Statement of Information:⁵

On May 8, 2017, the Custodian filed a Statement of Information (“SOI”).⁶ The Custodian certified that she received the Complainant’s OPRA request on September 27, 2016. The Custodian certified that her search included providing the subject OPRA request to the Secretary and discussing whether any responsive records existed. The Custodian affirmed that the Secretary advised that no records prepared by the Commission or an outside contractor existed. The Custodian certified that she responded in writing on October 12, 2016 denying the request because no records existed.

The Custodian further affirmed that the Township had no jurisdiction over, and did not own, the BROS Site. The Custodian also certified that her office did not maintain any responsive records from the Solicitor or outside contractors. Nonetheless, the Custodian contended that she misinterpreted the Complainant’s use of the words “[Township] Board” to mean solely the Commission members because the Township has a Council and not a Board. The Custodian asserted that she did not realize her mistake until after the Complainant filed this 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 Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014), the complainant filed a Denial of Access Complaint devoid of any arguments regarding the alleged denial, whether factual or otherwise. The custodian submitted an SOI indicating his arguments as to the alleged denial. Notwithstanding, the Council determined that the complaint should be dismissed because the complainant failed to state a claim. Citing Collazo

⁵ On February 2, 2017, this complaint was referred to mediation. On April 3, 2017, this complaint was referred back to the GRC for adjudication.

⁶ The Custodian originally submitted her SOI on April 27, 2017. However, the GRC identified several references to mediation, as well as a mediation communication. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4. The GRC thus returned the SOI and requested that the Custodian resubmit same omitting all references to mediation and the mediation communication.

v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014) (holding that the complaint be dismissed because the complainant failed to identify alleged unlawful denial); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014) (holding that the complaint be dismissed because the complainant failed to identify records denied or any arguments in support of the alleged unlawful denial); Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014) (holding that the complaint be dismissed because the complainant failed to identify records denied or any arguments in support of the alleged unlawful denial); Alterman v. Sussex Cnty. Sherriff's Office, GRC Complaint No 2013-353 (September 2014) (dismissing the complaint because it "lacked any factual or legal basis alleging" the complainant was denied access to records).

Here, the Complainant submitted his Denial of Access Complaint without any arguments. The Complainant did not include a "Detail Summary" or "Records Denied" list, nor any other commentary allowing the GRC to even infer the relevant issues.⁷ Similar to the filing in Murphy, the Complainant failed to argue any reasons as to why he believed he was unlawfully denied, what records he believed he should have received, and/or the relief sought by filing the instant complaint. As such the Complainant failed to state a claim on which the GRC could grant relief.

Accordingly, because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging an unlawful denial of access to the requested records, he failed to state a claim on which the Council could grant relief. See Murphy, GRC 2014-76. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging an unlawful denial of access to the requested records, he failed to state a claim on which the Council could grant relief. See Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

September 18, 2018

⁷ This is notwithstanding that the GRC previously returned the original Denial of Access Complaint filing as incomplete and requesting that the Complainant resubmit same having completed all form pages.