



State of New Jersey
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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2019 Government Records Council Meeting

Clinton C. Barlow, III
Complainant

Complaint No. 2017-136

v.

NJ Motor Vehicle Commission
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 voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the evidence of record supports that the Custodian never received the Complainant’s alleged OPRA requests and there is no credible evidence in the record to contradict the Custodian’s Statement of Information certification. Thus, the Custodian did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. See Avila v. Camden Cnty. Prosecutor’s Office, GRC Complaint No. 2007-287 (July 2008). The GRC further declines to address the disclosability of the responsive record based on the Custodian’s asserted exemption.

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 26th 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**

**Clinton C. Barlow, III¹
Complainant**

GRC Complaint No. 2017-136

v.

**New Jersey Motor Vehicle Commission²
Custodial Agency**

Records Relevant to Complaint: Copy of New Jersey Motor Vehicle Commission (“MVC”) security camera footage from October 13, 2015 between 2:15 p.m. and 2:30 p.m.

Custodian of Record: Joseph F. Bruno
Request Received by Custodian: None.
Response Made by Custodian: None.
GRC Complaint Received: June 13, 2017

Background³

Request and Response:

On various dates between October 15, 2015 and June 12, 2017, the Complainant purportedly submitted Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On June 13, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that MVC failed to respond to his multiple requests for the responsive security footage. The Complainant included as part of his complaint three (3) potential OPRA requests.

Statement of Information:⁴

On August 31, 2017, the Custodian filed a Statement of Information (“SOI”). The

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Brad M. Reiter.

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 On July 7, 2017, this complaint was referred to mediation. On August 11, 2017, this complaint was referred back to the GRC for adjudication.

Custodian certified that he never received the Complainant's alleged OPRA requests on any of the dates identified in the Denial of Access Complaint. The Custodian thus affirmed that no response was provided. The Custodian further averred that although the Complainant identified five (5) potential request dates, he only attached three (3) requests to the Denial of Access Complaint. The Custodian noted that the first and second requests were from June 10 and June 12, 2017 (the date the Complainant verified his complaint) and the third was dated November 26, 2015. The Custodian noted that the Complainant provided no responses besides a December 14, 2015 letter from MVC relating to a non-OPRA complaint.

The Custodian argued that even if he had received the alleged requests, the record sought was exempt from disclosure under N.J.S.A. 47:1A-1.1 and Gilleran v. Palagano, 227 N.J. 159, 163 (2016). The Custodian asserted that the requested footage was part of a security surveillance system, which the Gilleran Court determined was exempt under OPRA.

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 Avila v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2007-287 (July 2008), the custodian certified that she did not receive any OPRA requests for request item Nos. 4 and 5. The Council held that "the Custodian has not unlawfully denied access to request Items No. 4 and No. 5 because the Custodian certified that no OPRA request was ever received from the Complainant." Id. See also Petrycki, Jr., Esq. (O.B.O. James Donio) v. Twp. of Hammonton (Atlantic), GRC Complaint No. 2009-159 (May 2010).

Regarding the alleged OPRA requests, the Complainant argued in the Denial of Access Complaint that he submitted OPRA requests to MVC on "10-20-15, 11-26-15, 3-16, 8-16, [and] 6-17." Included in the Denial of Access Complaint was the November 26, 2015 OPRA request, as well as two (2) OPRA requests dated June 10, and 12, 2017. The Custodian certified in the SOI that he did not respond to the subject requests because MVC never received any request for the identified times. The Custodian also noted that the two (2) June requests were dated closely to the filing of this complaint.

In reviewing the facts and arguments here, the GRC is satisfied that no violation regarding any of the requests occurred. First, the Complainant provided no evidence that he submitted an OPRA request for the request security footage on "10-20-15, 3-16, [or] 8-16." Additionally, the request dated November 26, 2015, which was on the GRC's model request form, sought records not identified as at issue here. Finally, the Complainant included two (2) requests from June 2017; however, both were filed within two (2) days of this complaint. Thus, this complaint is directly on point with Avila, GRC 2007-287, and a similar conclusion should follow.

Therefore, the evidence of record supports that the Custodian never received the Complainant's alleged OPRA requests and there is no credible evidence in the record to contradict the Custodian's SOI certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. See Avila, GRC 2007-287. The GRC further declines to address the disclosability of the responsive record based on the Custodian's asserted exemption.

The GRC finally notes that June 10, 2017 was a Saturday and June 12, 2017 was a Monday. Thus, even if the Custodian received either of these requests, a complaint filed on June 12, 2017 would have been unripe for adjudication absent his denying access in writing prior. See Moretti v. Borough of Paramus (Bergen), GRC Complaint No. 2015-405 (June 2016).

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the evidence of record supports that the Custodian never received the Complainant's alleged OPRA requests and there is no credible evidence in the record to contradict the Custodian's Statement of Information certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. See Avila v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2007-287 (July 2008). The GRC further declines to address the disclosability of the responsive record based on the Custodian's asserted exemption.

Prepared By: Frank F. Caruso
Acting Executive Director

February 19, 2019