



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

August 27, 2019 Government Records Council Meeting

Patrick Desmond
Complainant

Complaint No. 2017-188

v.

Borough of Oceanport (Monmouth)
Custodian of Record

At the August 27, 2019 public meeting, the Government Records Council (“Council”) considered the August 20, 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’s response to the Complainant’s August 25, 2017 OPRA request was sufficient because she stated that the only available attendance record for the Mayor was located on the Borough of Oceanport’s website. Therefore, there was no unlawful denial of access. See N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).

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 27th Day of August 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: August 29, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 27, 2019 Council Meeting**

**Patrick Desmond¹
Complainant**

GRC Complaint No. 2017-188

v.

**Borough of Oceanport (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: “[Inspection of or copies of] public records that demonstrate the Time and Attendance, Mayor’s Schedules, Meetings, Conferences, Assignments of Mayor John F. Coffey [(“Mayor”)] where his attendance was required and/or in which he met individuals or groups from a period of January 2016 to the present. This may include locations in/or around Oceanport, Monmouth County, and/or Fort Monmouth.”

Custodian of Record: Donna M. Phelps

Request Received by Custodian: August 25, 2017

Response Made by Custodian: September 5, 2017

GRC Complaint Received: September 4, 2017

Background³

Request and Response:

On August 25, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 1, 2017, the Custodian responded in writing stating that the Borough of Oceanport (“Borough”) does not keep any “Time & Attendance” records for the Mayor. The Custodian added that the only public record available regarding his attendance would be the roll call at the “Workshop and Regular Meetings of the Governing Body.” The Custodian stated that this information could be found on the Borough’s website and provided the Complainant directions to access same.

Denial of Access Complaint:

On September 4, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian only

¹ No legal representation listed on record.

² Represented by Scott C. Arnette, Esq., of The Arnette Law Firm, LLC (Red Bank, 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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

addressed a portion of the request, asserting that the Borough did not keep such records. The Complainant asserted that the Custodian failed to address the request and asserted that the Custodian and Mayor knowingly and willfully violated OPRA.

Statement of Information:

On November 7, 2017 the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 25, 2017. The Custodian certified that her search included discussions with the Borough Administrator. The Custodian certified that during those discussions she gained information on the availability of schedules as well as time and attendance records. The Custodian certified that she responded in writing on September 1, 2017, stating that the Complainant could access responsive records via the Borough’s website.

The Custodian asserted that notwithstanding her claim that she fully responded to the Complainant’s request, she did not waive any right that she has given to interpreting the request. The Custodian maintained that the request failed to identify with reasonable clarity the specific government records sought. See Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian asserted that the Complainant’s request seeking records which “demonstrate” the Mayor’s time and attendance, schedules, *etc.*, was invalidated at the outset as improper. The Custodian then asserted that the second part of the request which references individuals or groups the Mayor met with presupposed that a record of any such interaction was kept. The Custodian contended that the GRC should take note that the Borough is not a large municipality, and that it wouldn’t have the resources to maintain time and attendance sheets to substantiate the \$1,500 stipend the Mayor receives.

The Custodian argued that instead of printing out eighteen (18) months of meetings minutes and roll calls and charge an estimated \$100 for copying costs, she directed the Complainant to the Borough’s website where he could search through the records in digital format. The Custodian asserted that she fully responded to the request, notwithstanding the claim that the request was improper.

Analysis

Sufficiency of Response

OPRA provides that a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually.” Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).

Here, the Custodian responded to the Complainant’s OPRA request on September 1, 2017, stating that there were no “Time & Attendance” records for the Mayor. The Custodian also stated that the only public records available containing attendance information for the Mayor would be the roll call contained within the “Workshop and Regular Meetings of the Governing Body.” The

Custodian also directed the Complainant to where he could locate those records on the Borough website. The Complainant argued that this response was insufficient, stating that the Custodian failed to address his request for the Mayor's attendance schedules, conferences, and meetings with individuals and groups.

In the SOI, the Custodian certified that the Mayor's position is a part-time position, and the Borough would not have the time and attendance sheets to substantiate the work involved. The Custodian argued that as such, the response provided was complete, as it directed the Complainant to the only source containing attendance information for the Mayor.

Upon review, the GRC is satisfied that the Custodian provided a sufficient response. The Complainant's request sought attendance records for the Mayor spanning different types of events and circumstances. While the Custodian did not explicitly state that no records existed for each identified event, her response that the only available attendance record was the roll call located at the Borough's website inferred that no records existed for those events.

Therefore, the Custodian's response to the Complainant's August 25, 2017 OPRA request was sufficient because she stated that the only available attendance record for the Mayor was located on the Borough's website. Therefore, there was no unlawful denial of access. See N.J.S.A. 47:1A-5(g) and Paff, GRC 2007-272.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian's response to the Complainant's August 25, 2017 OPRA request was sufficient because she stated that the only available attendance record for the Mayor was located on the Borough of Oceanport's website. Therefore, there was no unlawful denial of access. See N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).

Prepared By: Samuel A. Rosado
Staff Attorney

August 20, 2019