



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 13, 2018 Government Records Council Meeting

Dewayne Roy Wilson
Complainant

Complaint No. 2017-199

v.

Essex County Prosecutor's Office
Custodian of Record

At the November 13, 2018 public meeting, the Government Records Council ("Council") considered the November 7, 2018 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 did not unlawfully deny access to the Complainant's request because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. NJ 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 13th Day of November, 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: November 15, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
November 13, 2018 Council Meeting**

**Dewayne Roy Wilson¹
Complainant**

GRC Complaint No. 2017-199

v.

**Essex County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Copies of any and all papers relating to the Complainant's transfer of custody from the Essex County Jail to the City of Charlottesville, Virginia authorities on or about January 14, 2003.

Custodian of Record: Michael Morris³
Request Received by Custodian: September 1, 2015⁴
Response Made by Custodian: September 9, 2015
GRC Complaint Received: October 16, 2017

Background⁵

Request and Response:

On September 1, 2015, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On September 9, 2015, the fifth (5th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that a search failed to produce any records responsive to the request. As such, the Custodian denied the request.

Denial of Access Complaint:

On October 16, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he provided the request to the Custodian on or about September 1, 2015, and the Custodian responded to the request on or about September 9, 2015.

¹ No legal representation listed on record.

² Represented by Leeann Cunningham, Esq. (Newark, NJ).

³ The original Custodian responding to the OPRA request was Debra Simms.

⁴ The Complainant filed a Freedom of Information Act request; however, the original Custodian stated that the agency was treating it as an OPRA request.

⁵ 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.

The Complainant stated that he was denied access to a waiver and other documents related to his extradition on January 14, 2003 because the Custodian's search did not produce any responsive records. The Complainant asserted that the requested documents were in the sole possession of the Essex County Prosecutor's Office under State ID NJ923452B. The Complainant stated that he would "refrain from making any legal argument at this point because [he does] not feel it is necessary to the location of the requested documents."

Statement of Information:

On October 24, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that the Complainant's OPRA request was received on September 1, 2015, and the original Custodian responded in writing on September 9, 2015.

The Custodian certified that a search of the agency's files for the requested records at the time of the request revealed that there were no responsive records. The Custodian further certified that, in an effort to locate responsive records, he inquired of the Essex County Sheriff's Office but was informed that their extradition records are purged after seven (7) years, which in this case was 2010. The Custodian stated that even if the Complainant had requested the records from the Sheriff's Office, they would not have been in existence because they were purged five (5) years prior to the date of his request.

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 Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that the records responsive to the Complainant's request, documents relating to the Complainant's transfer of custody from the Essex County Jail to Charlottesville, Virginia on or about January 14, 2003, do not exist based on a search of the agency's files. The Custodian further certified that, in an effort to locate responsive records, he contacted the Essex County Sheriff's Office and was informed that their extradition records were purged after seven (7) years, which in this case was 2010.

As such, the Custodian did not unlawfully deny access to the Complainant's request because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's request because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: John E. Stewart
Staff Attorney

November 7, 2018