



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
*Governor*

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

**FINAL DECISION**

**April 30, 2019 Government Records Council Meeting**

Carey Cornett  
Complainant

Complaint No. 2017-50

v.

Borough of North Haledon (Passaic)  
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council (“Council”) considered the April 23, 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 has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking Commission girls’ basketball for the 5<sup>th</sup> and 6<sup>th</sup> grade teams, as well as the 7<sup>th</sup> and 8<sup>th</sup> grade teams, for 2015-2016 and 2016-2017. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. 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 30<sup>th</sup> Day of April 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: May 3, 2019**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
April 30, 2019 Council Meeting**

**Carey Cornett<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-50**

v.

**Borough of North Haledon (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Inspection or electronic copies via e-mail of rosters for the Borough of North Haledon (“Borough”) Recreation Commission (“Commission”) girls’ basketball. Specifically, the 5<sup>th</sup> and 6<sup>th</sup> grade rosters for 2015-2016 and 2016-2017, as well as the 7<sup>th</sup> and 8<sup>th</sup> grade rosters for 2015-2016 and 2016-2017.

**Custodian of Record:** Renate Elatab

**Request Received by Custodian:** February 23, 2017

**Response Made by Custodian:** March 3, 2017

**GRC Complaint Received:** March 8, 2017

**Background<sup>3</sup>**

**Request and Response:**

On February 23, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 2, 2017, the Complainant faxed the Custodian advising that he had not received a response to his OPRA request. On March 2, 2017, the Custodian confirmed receipt of the request and noted that she sent the Recreation Commissioner an e-mail regarding the request. The Custodian noted that the seventh (7<sup>th</sup>) business day did not expire until March 6, 2017.

On March 3, 2017, the Custodian responded in writing stating that the Recreation Commissioner advised that it “[did] not maintain in town girl’s rosters. [The Commission] only [kept] records of who register[ed] for the program.” Later that day, the Complainant e-mailed the Custodian disputing that no records existed. The Complainant attached an e-mail from Kyle Graham, the “Boy’s club league” director, who advised that all boys’ teams have either a roster or list of players for each team. The Complainant further asserted that Joe Lozito verbally advised

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Michael P. De Marco, Esq., of De Marco & De Marco, Esqs. (North Haledon, NJ).

<sup>3</sup> 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.

him that the Commission maintained rosters. On the same day, the Custodian responded advising that she would forward the Complainant's e-mails to Custodian's Counsel.

On March 7, 2017, the Complainant e-mailed the Custodian stating that he received no response from the Custodian within seven (7) business days. The Complainant asked whether he was being denied access to the requested records. The Custodian responded stating that she did provide a response and was not denying access to the request. The Custodian noted that she advised the Complainant that she would contact Counsel, which she did. The Custodian stated that she was waiting for a reply. On the same day, the Complainant responded stating that the Custodian could call Mr. Lozito and ask him directly. The Complainant stated that such an action would take little time and result in a definitive response.

On March 8, 2017, the Custodian's Counsel sent an e-mail to the Complainant reiterating that no records exist. Counsel stated that the Commission only maintained the online registration information: individual volunteer coaches are left to decide whether to create rosters. Counsel noted that whether the coaches chose to create rosters is of no moment: same would not constitute "government records" as defined under OPRA. Counsel further argued that even if the rosters existed, they would be exempt under the privacy interest exemption. N.J.S.A. 47:1A-1.

#### Denial of Access Complaint:

On March 8, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he believed the requested rosters did exist. The Complainant noted that he received an e-mail from Mr. Graham confirming the existence of rosters.

Additionally, the Complainant noted that the Borough girls participate in two (2) other leagues where rosters were required and made available. The Complainant alleged that "both [Borough] teams" submitted rosters in the Northwest Bergen Passaic Girls Basketball League. The Complainant also contended that disclosure of the rosters did not implicate privacy interest. The Complainant stated that his daughter is on one of the teams and he would have no problem with her name being on a roster.<sup>4</sup>

#### Statement of Information:

On March 20, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on February 23, 2017. The Custodian certified that her search included e-mailing the Recreation Commissioner, who advised that no records existed. The Custodian certified that she responded in writing on March 3, 2017 advising that no records existed. The Custodian affirmed that after the Complainant challenged this response, she referred that matter to Custodian's Counsel.

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<sup>4</sup> The Complainant submitted additional documents for his Denial of Access Complaint on March 9, 2017. The GRC included this communication as part of the Denial of Access Complaint entry for clarity purposes.

### Additional Submissions:

On March 20, 2017, the Complainant e-mailed the GRC asserting that the Recreation Commissioner, Mr. Lozito, and/or any other member of the Commission contacted about this request should be required to submit an SOI. The Complainant further noted that the Custodian did not provide any communications to support her search efforts.

On April 8, 2019, the GRC sought additional information from the Custodian. Therein, the GRC asserted that the documents submitted as part of the complaint implied that the Custodian exchanged e-mail communications with the Recreation Commissioner regarding the non-existence of the requested rosters.<sup>5</sup> The GRC stated that those e-mails were not attached. The GRC thus requested copies of any e-mails with the Recreation Commissioner under cover of legal certification. The GRC also suggested that the Custodian obtain and submit a legal certification from the Recreation Commissioner regarding the veracity of his determination that no rosters existed. The GRC requested that the Custodian provide the requested certification(s) by close of business on April 11, 2019.

On April 10, 2019, the Custodian responded to the GRC's request for additional information. Therein, the Custodian certified that she never stated that she received an e-mail in which the Recreation Commissioner advised "that no rosters existed." The Custodian affirmed that she had a telephone conversation with the Recreation Commissioner. The Custodian certified that at that time, the Recreation Commissioner stated that the Commission did not maintain town girls' rosters, only registrations. The Custodian thus affirmed that she could not provide the e-mail sought because it did not exist.

On April 11, 2019, the GRC confirmed receipt of the Custodian's certification. Further, the GRC requested that the Recreation Commissioner also submit a legal certification concerning the existence of the requested rosters. On April 12, 2019, the Custodian submitted a certification from the Recreation Commissioner. Therein, he affirmed that the Commission did not maintain girls' rosters; thus, same could not be produced. Further, the Recreation Commissioner confirmed that the Commission only tracked registrations for the program.

### 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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC

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<sup>5</sup> The basis for this claim came from a March 2, 2017 e-mail wherein the Custodian stated to the Complainant that she "sent the Recreation Commissioner another e[-]mail asking about the status of [the Complainant's] OPRA request."

Complaint No. 2005-49 (July 2005). Here, the Complainant's OPRA request sought rosters for two (2) grade groups over a two (2) year period. The Custodian denied access to the Complainant's OPRA request, stating the Commission "[did] not maintain in town girl's rosters. [The Commission] only [kept] records of who register[ed] for the program." The Complainant disputed this in the Denial of Access Complaint, noting that he spoke with Mr. Lozito and Mr. Graham who confirmed the existence of rosters. However, in the SOI, the Custodian certified that no records existed. Thereafter, the Complainant raised questions as to why additional individuals did not submit SOI responses and why the Custodian did not include communications between herself and those individuals.

In order to clarify the Custodian's SOI response, the GRC sought additional information regarding the existence of the requested records. Specifically, the GRC sought communications between herself and the Recreation Commissioner that the SOI implied existed. On April 11, 2019, in response to the GRC's request for additional information, the Custodian affirmed that the Recreation Commission verbally advised her that no rosters existed. Based on this, the GRC asked that the Recreation Commissioner submit a legal certification. On April 12, 2019, the Recreation Commissioner submitted his own legal certification confirming that the Commission did not maintain the requested rosters.

All of the above substantiates the Custodian's denial on the basis that no records existed. Thus, while the Complainant made some compelling arguments in the Denial of Access Complaint, the GRC is satisfied that the Custodian and Recreation Commissioner's supplemental legal certifications supported the denial of access. Of additional note, Mr. Graham is the director of the boys' team, which may have had rosters. However, it does not necessarily follow that the girls' team did as well. Further, the Complainant's assertion that other leagues required rosters in basketball or soccer does not necessarily support that the Commission created rosters for those leagues. Thus, the above evidence in the record does not effectively refute that the Custodian did not possess the responsive records.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking Commission girls' basketball for the 5<sup>th</sup> and 6<sup>th</sup> grade teams, as well as the 7<sup>th</sup> and 8<sup>th</sup> grade teams, for 2015-2016 and 2016-2017. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking Commission girls' basketball for the 5<sup>th</sup> and 6<sup>th</sup> grade teams, as well as the 7<sup>th</sup> and 8<sup>th</sup> grade teams, for 2015-2016 and 2016-2017. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso  
Acting Executive Director

April 23, 2019