



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 28, 2020 Government Records Council Meeting

Ronald DeMeco
Complainant

Complaint No. 2018-140

v.

Bergen County Sheriff's Office
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council ("Council") considered the April 3, 2020 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 his burden of proof that he lawfully denied access to the Complainant's OPRA request. Specifically, the Custodian certified that no responsive records existed and there is no competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; 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 28th Day of April 2020

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: April 30, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2020 Council Meeting**

**Ronald DeMeco¹
Complainant**

GRC Complaint No. 2018-140

v.

**Bergen County Sheriff's Office²
Custodial Agency**

Records Relevant to Complaint: Via U.S. mail, a copy of phone records verifying the date and time of a call made by the Complainant to his attorney from Bergen County Jail ("BCJ") between June 20, 2017 and July 20, 2017.

Custodian of Record: Captain Ryan King
Request Received by Custodian: June 19, 2018
Response Made by Custodian: June 25, 2018
GRC Complaint Received: July 8, 2018

Background³

Request and Response:

On June 12, 2018, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On June 25, 2018, the Custodian responded in writing advising the Complainant that no responsive records existed.

Denial of Access Complaint:

On July 8, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant alleged that his phone call was recorded into the "Advocates" book in the BCJ law library. The Complainant further alleged that the law library should have a record of his presence there on the day the call was made. The Complainant contended that his phone call should be reflected on BCJ's itemized phone bill.

¹ No legal representation listed on record.

² Represented by Patrick J. O'Dea, Esq., Chief Counsel to the Sheriff, Office of the Bergen County Sheriff, (Hackensack, 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.

The Complainant asserted that he had a legal right to obtain his own phone records. The Complainant further asserted that he only wished to obtain written verification of the date and time of his call. The Complainant argued that failure to maintain records of this kind was a violation of DOC regulations.

Statement of Information:⁴

On September 25, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 19, 2018. The Custodian certified that his search revealed that the above-mentioned records did not exist. The Custodian certified that he responded in writing on June 25, 2018 advising the Complainant that the Bergen County Sheriff’s Office (“BCSO”) had no responsive records to the subject OPRA 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.

The GRC has previously found that, in light of a custodian’s certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian’s certification, no unlawful denial of access occurred. In Pusterhofer v. N.J. 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.

In the matter before the Council, the Complainant’s OPRA request sought phone records confirming the date and time of a phone call he made to his attorney from BCJ. The Custodian responded in writing advising the Complainant that no responsive records existed.

After reviewing the evidence on record, the GRC is satisfied that the Custodian lawfully denied access to the Complainant’s OPRA request. The Custodian certified in the SOI that the responsive records never existed. Additionally, there is no competent, credible evidence in the record to refute the Custodian’s certification.

⁴ On August 1, 2018, this complaint was referred to mediation. On August 23, 2018, this complaint was referred back to the GRC for adjudication.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request. Specifically, the Custodian certified that no responsive records existed and there is no competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request. Specifically, the Custodian certified that no responsive records existed and there is no competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Brandon Garcia
Case Manager

April 3, 2020