



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**November 12, 2019 Government Records Council Meeting**

Scott Madlinger  
Complainant

Complaint No. 2018-18

v.

Berkeley Township (Ocean)  
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 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 did not unlawfully deny access to the Complainant’s January 26, 2018 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian’s assessed \$0.47 charge for six (6) legal and one (1) letter sized pages of responsive records is lawful and reasonable, as she had to print and redact the documents prior to electronic disclosure. See N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011).

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 12<sup>th</sup> Day of November 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: November 15, 2019**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 12, 2019 Council Meeting**

**Scott Madlinger<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-18**

v.

**Berkeley Township (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:<sup>3</sup>**

1. Copy of application form PTD for property located at 14 Bedeviere Court, Toms River, NJ 08757. B 4.219 L 72.
2. Copies of all forms PDS for property mentioned in item #1.

**Custodian of Record:** Karen Stallings

**Request Received by Custodian:** January 26, 2018

**Response Made by Custodian:** January 31, 2018

**GRC Complaint Received:** February 6, 2018

**Background<sup>4</sup>**

**Request and Response:**

On January 26, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 31, 2018, the Custodian responded in writing providing responsive records, but also stated that six (6) legal-sized pages of records were located in response to Item No. 1 and one (1) page in response to Item No. 2. The Custodian added that although the Complainant requested the records in electronic format, those pages required redaction. The Custodian stated that in accordance with Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011), she was permitted to charge \$0.42 for Item No. 1 and \$0.05 for Item No. 2, for printing the pages requiring redactions. For both Items the Custodian stated that the redactions were made under OPRA’s privacy interest exemption. See N.J.S.A. 47:1A-1.1.

On February 4, 2018, the Complainant responded to the Custodian, stating that the PTD was

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

<sup>2</sup> Represented by Lauren R. Staiger, Esq. of Gilmore & Monahan (Toms River, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this matter.

<sup>4</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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

a one (1) page form, so there should not be six (6) pages withheld.

On February 5, 2018, the Custodian responded to the Complainant, stating that the other five (5) pages consist of documentation which were required by the PTD application, and therefore included therein. The Custodian added that if the Complainant desired a specific page in the application, he should have stated as much in his request. The Custodian stated that they would be able to provide the one (1) page form the Complainant requested but noted that the page required redactions pursuant to N.J.S.A. 47:1A-1.1. The Custodian stated that the cost for the page was \$0.07 plus \$0.05 for the accompanying PD5 form.

That same day, the Complainant replied to the Custodian, providing a URL link to a copy of the PTD form, and stating that the PTD form was one (1) page in length. The Complainant also asked the Custodian why there were five (5) additional pages. Before the Custodian could respond, the Complainant sent another e-mail, stating that he has prepared a Denial of Access Complaint.

#### Denial of Access Complaint:

On February 6, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian withheld the responsive records until he paid for the copying costs incurred. The Complainant contended that the PTD form should only be one (1) page.

#### Statement of Information:

On February 27, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 26, 2018. The Custodian certified that she forwarded the request to the Assessor’s & Collector’s office that same day. The Custodian certified she received the documents from them on January 29, 2018. The Custodian then certified that she reviewed the records and determined that some the pages needed to be printed out and redacted to remove Social Security numbers and birthdates. The Custodian then certified that she sent the records to the Berkeley Township (“Township”) attorney to confirm that the redactions were valid and whether the Township could charge for the copying costs. The Custodian certified that she responded in writing on January 31, 2018, providing records via e-mail apart from those pages which needed to be printed out and redacted before disclosure.

The Custodian maintained that the redactions were appropriate to protect individuals’ privacy interests under N.J.S.A. 47:1A-1.1. The Custodian also maintained that withholding the redacted pages until payment was received was valid under Paff, GRC 2010-09.

### 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.

OPRA also provides that “the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger . . . [a]ccess to electronic records and non-printed materials shall be provided free of charge.” N.J.S.A. 47:1A-5(b).

In Paff, GRC 2010-09, the custodian charged the complainant \$6.00 for eight (8) pages of responsive minutes.<sup>5</sup> The custodian provided the complainant with redacted copies of the minutes. The Council held that “because the custodian had to make paper copies of the requested records in order to redact the requested minutes prior to providing same electronically, the custodian’s charge of \$6.00 for the cost of copying the records to perform redactions prior to providing the records to the complainant electronically is warranted . . . .”

The facts in this matter are similar those in Paff. Here, the Custodian provided responsive records electronically at the time of the response, but certified that she had to print six (6) pages of legal sized documents and one (1) letter sized document in order to redact Social Security numbers and a birthdate, in accordance with OPRA’s privacy interest exemption. Thus, the Custodian’s charge of \$0.47 for seven (7) pages of responsive records was reasonable because it was the lawful “fees assessed for the duplication of a government record embodied in the form of printed matter.” N.J.S.A. 47:1A-5(b).

Therefore, the Custodian did not unlawfully deny access to the Complainant’s January 26, 2018 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian’s assessed \$0.47 charge for six (6) legal and one (1) letter sized pages of responsive records is lawful and reasonable, as she had to print and redact the documents prior to electronic disclosure. See N.J.S.A. 47:1A-5(b); Paff, GRC 2010-09.<sup>6</sup>

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant’s January 26, 2018 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian’s assessed \$0.47 charge for six (6) legal and one (1) letter sized pages of responsive records is lawful and reasonable, as she had to print and redact the documents prior to electronic disclosure. See N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011).

Prepared By: Samuel A. Rosado  
Staff Attorney

October 30, 2019

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<sup>5</sup> At the time this matter was decided, OPRA provided that “the fee assessed for the duplication of a government record embodied in the form of printed matter shall not exceed the following: first page through the tenth page, \$0.75 per page; eleventh page to twentieth page \$0.05 per page; all pages over twenty, \$0.25 per page . . . .” N.J.S.A. 47:1A-5(b).

<sup>6</sup> The GRC does not address the Custodian’s redactions made to the responsive records because the Complainant did not raise the issue at any point during the pendency of this complaint.