



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**

Edgardo Collazo  
Complainant

Complaint No. 2018-213

v.

County of Passaic  
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 21, 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 bore his burden of proof that he lawfully denied access to the Complainant’s OPRA request because the Custodian certified, 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); and Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-339 (June 2014).

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 28<sup>th</sup> 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**

**Edgardo Collazo<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-213**

**v.**

**County of Passaic<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**<sup>3</sup> “Any and all financial records showing how many Mail [sic] in ballots were received and all financial records to the ordered [sic] purchased of the Mail in Ballots [sic] for the Novembers [sic] 2018 Elections [sic].”

**Custodian of Record:** Matthew P. Jordan, Esq.  
**Request Received by Custodian:** September 24, 2018  
**Response Made by Custodian:** October 1, 2018  
**GRC Complaint Received:** October 1, 2018

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

**Request and Response:**

On September 24, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 1, 2018, the Custodian responded in writing, stating that there were no responsive records to the request.

**Denial of Access Complaint:**

On October 1, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was told by the Custodian that the County of Passaic still did not have invoices relating to a printing order for mail-in ballots for the November 2018 elections.

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

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The Complainant did not specify a delivery method.

<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.

### Statement of Information:

On November 28, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 24, 2018. The Custodian certified that he forwarded the request to the Passaic County Clerk’s Office (“PCCO”) to conduct a search for responsive records. The Custodian certified that on September 25, 2018, Nicolle Mancini of the PCCO informed him in writing that no responsive records existed at the time of the request. The Custodian certified that he responded in writing on October 1, 2018, stating that no responsive records exist.

### 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 Complaint No. 2005-49 (July 2005). In Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-339 (June 2014), the complainant sought election records for the November 2013 election. The custodian certified that no responsive records existed at the time of the request. The Council held that because the custodian responded and certified that responsive records did not exist at the time of the request, there was no unlawful denial of access. See also Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013).

In the instant matter, the Complainant sought financial records from the Custodian relating to the November 2018 elections. The Custodian responded stating that no responsive records exist. Thereafter, the Custodian certified that he was told by Ms. Mancini at the PCCO that no responsive records existed at the time of the request. Thus, in accordance with Collazo, GRC 2013-339, there was no unlawful denial of access.

Accordingly, the Custodian has bore his burden of proof that he lawfully denied access to the Complainant’s OPRA request because the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49; and Collazo, GRC 2013-339.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has bore his burden of proof that he lawfully denied access to the Complainant’s OPRA request because the Custodian certified, 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); and Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-339 (June 2014).

Prepared By: Samuel A. Rosado  
Staff Attorney

April 21, 2020