



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 30, 2019 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2019-123

v.

Monmouth County
Custodian of Record

At the July 30, 2019 public meeting, the Government Records Council (“Council”) considered the July 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 because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging he was unlawfully denied access to government records, or that the proposed special service charge is unreasonable or not applicable, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

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 30th Day of July 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: August 2, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2019-123

v.

**Monmouth County²
Custodial Agency**

Records Relevant to Complaint: “Copies of all tort claim notices received 01/01/2018-03/31/2018.”

Custodian of Record: Marion Masnick

Request Received by Custodian: June 6, 2019

Response Made by Custodian: June 17, 2019

GRC Complaint Received: July 2, 2019

Background³

Request and Response:

On June 6, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 17, 2019, the seventh (7th) business day following receipt of said request, the Custodian’s Counsel responded in writing via e-mail informing the Complainant that the County had approximately ninety (90) documents responsive to the request and that there would be a special service charge to cover the costs associated with gathering, reviewing and redacting the records. The Custodian’s Counsel stated that it would take clerical personnel approximately five minutes to review each Notice of Claim and make any required redactions at the lowest hourly rate of \$29.00 per hour. Counsel stated that the total special service charge would be \$217.00, and the County would disclose the records fifteen business days after receipt of payment. The Custodian’s Counsel informed the Complainant that the special service charge could be reduced if the Complainant specified the type of Tort Claim Notice(s) he was seeking, such as for personal injuries, automobile accidents, property damage, etc.

¹ No legal representation listed on record.

² Represented by Michael D. Fitzgerald, Esq. (Freehold, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On July 2, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). On the *Detail Summary* page the Complainant listed the date of the request, the date the request was received by the Custodian, the date of the response “telling me this requires a \$217.00 special service charge,” and “see Wronko vs. North Arlington.” The *Records Denied List* recited the records requested and “\$217.00 special service charge.” The complaint was devoid of any arguments asserting an unlawful denial or unreasonable special service charge. As such, the Complainant failed to provide any argument or support for why the Complainant believed he was denied access to the records.

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.

Here, the complaint is not actionable because the Complainant failed to provide any factual or legal basis alleging he was denied access to government records. The Complainant appears to have listed a complaint caption but does not include a citation or indicate which forum decided the matter, if any. Furthermore, the Complainant does not argue, or even attempt to explain, how the captioned matter relates to the denial of access in the instant complaint. In Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014), the complainant’s denial of access complaint lacked any arguments or legal precedent in support of his complaint. The Council found that the custodian did not unlawfully deny access to the OPRA request, in part, because the complainant failed to advance any argument in support of his claim. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014).

Here, the Complainant failed to advance any argument in support of his claim for an unlawful denial of access to records. See Loigman, GRC 2013-242. Therefore, the Complainant failed to state a claim on which the GRC could grant relief.

Accordingly, because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging he was unlawfully denied access to government records, or that the proposed special service charge is unreasonable or not applicable, the Complainant failed to state a claim on which the Council could grant relief. See Loigman, GRC 2013-242; Inzelbuch, GRC 2013-20; Collazo, GRC 2013-310. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging he was unlawfully denied access to government records, or that the proposed special service charge is unreasonable or not applicable, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart
Staff Attorney

July 23, 2019