



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 15, 2020 Government Records Council Meeting

Frank J. Festa, Jr.
Complainant

Complaint No. 2019-181

v.

Township of Marlboro (Monmouth)
Custodian of Record

At the December 15, 2020 public meeting, the Government Records Council (“Council”) considered the December 8, 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 because the Custodian timely responded granting inspection of the responsive records, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6; Valdes v. N.J. Dep’t of Educ., GRC Complaint No. 2012-30 (April 2013).

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 15th Day of December 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: December 17, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 15, 2020 Council Meeting**

**Frank J. Festa, Jr.¹
Complainant**

GRC Complaint No. 2019-181

v.

**Township of Marlboro (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “time to peruse the following” the Superior Court cases:

1. Stillwell Road Holdings, LLC. v. Twp. of Marlboro
2. El at Marlboro 79, LLC. v. Twp. of Marlboro
3. Ashbel Associates, LLC., *et al* v. Twp. of Marlboro
4. American Properties at Marlboro, LLC. v. Twp. of Marlboro
5. Marlboro Dev. Grp. v. Twp. of Marlboro
6. Buckdale, LLC. v. Twp. of Marlboro
7. K. Hovnanian Shore Acquisitions, LLC. v. Twp. of Marlboro
8. 3 Ronson, LLC. v. Twp. of Marlboro

Custodian of Record: Suzanne Branagan
Request Received by Custodian: June 3, 2019
Response Made by Custodian: June 3, 2019
GRC Complaint Received: August 27, 2019

Background³

Request and Response:

On May 30, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 3, 2019, the Custodian responded in writing advising the Complainant to call the Township of Marlboro (“Township”) to schedule an appointment for inspection. On June 10, 2019, the Custodian e-mailed the Complainant reminding him to contact the Township to schedule his inspection.

¹ No legal representation listed on record.

² Represented by Brian P. Trelease, Esq., of Rainone, Coughlin, Minchello, LLC (Iselin, 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.

Denial of Access Complaint:

On August 27, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was told he had “no right to the [records] sought.”

Statement of Information:

On November 4, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 3, 2019. The Custodian certified that she responded in writing on the same day advising the Complainant to schedule his inspection. The Custodian affirmed that she followed up on June 10, 2019 reminding the Complainant to schedule an inspection. The Custodian contended that instead of scheduling his inspection, the Complainant filed this complaint alleging that “the Township failed to respond to” his OPRA request.

The Custodian stated that OPRA “only allows requests for records, not requests for information.” MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian further contended that the OPRA response time frame did not apply where requests failed to identify specific records. N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). The Custodian contended that the evidence of record is clear that she timely responded to the OPRA request at issue here.

The Custodian averred that the Complainant only alleged that she failed to respond and did not challenge the actual response. The Custodian argued that the Complainant was “fully aware” of the Township’s responses and pursued this action with intent to harass the Township. The Custodian thus contended that this complaint was frivolous and must be dismissed.

Additional Submissions:

On October 28, 2019, the Complainant e-mailed the GRC alleging several communication issues with the Township. The Complainant asserted that the Township was not assisting him to locate specific records and instead denied his OPRA requests as invalid.⁴

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.

⁴ The Complainant’s e-mail was sent in relation to each of his ten (10) complaints being concurrently adjudicated.

Initially, the GRC notes that the Complainant argued in his complaint that he received a response but was told that he had “no right to the [records] sought.” This is contrary to the Custodian’s SOI assertion that the Complainant challenged a failure to respond.⁵ Thus, the crux of this complaint is whether the Custodian denied the Complainant inspection of the records sought in the subject OPRA request.

In Valdes v. N.J. Dep’t of Educ., GRC Complaint No. 2012-30 (April 2013), the complainant sought inspection of a specific record. The custodian timely responded on December 22, 2011 granting inspection and asking the complainant to schedule same prior to January 12, 2012. The custodian subsequently responded again on January 30, 2012 advising that the OPRA request was considered closed because the complainant failed to schedule his inspection. That complaint ensued, wherein the complainant contended that the custodian “never contacted him to arrange for his inspection . . .” Id. In the SOI, the custodian provided copies of her responses and argued that she properly responded to the OPRA request. The Council agreed, holding that the custodian “did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection.” Id. at 3.

Here, the Complainant argued that the Custodian would not permit him access to the court records sought in the subject OPRA request. However, the Custodian certified in the SOI that she twice responded to the Complainant in writing granting access of those records via inspection. Further, the Custodian attached those responses in support of her argument. Thus, the evidence supports that the Custodian timely responded granting inspection of the responsive records. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, and as in Valdes, GRC 2012-30, the Complainant failed to avail himself of his right to inspect the responsive records and instead chose to file this complaint arguing an unlawful denial of access. Thus, the evidence supports that the Custodian did not unlawfully deny access to the records sought and has not violated OPRA. See Valdes, GRC 2012-30.

Therefore, because the Custodian timely responded granting inspection of the responsive records, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6; Valdes, GRC 2012-30.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian timely responded granting inspection of the responsive records, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6; Valdes v. N.J. Dep’t of Educ., GRC Complaint No. 2012-30 (April 2013).

Prepared By: Frank F. Caruso
Executive Director

December 8, 2020

⁵ It should be noted that an alleged failure to respond was the Complainant’s argument in a majority of the other complaints mentioned in FN No. 4.