



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

March 30, 2021 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2020-08

v.

Berkeley Township (Ocean)
Custodian of Record

At the March 30, 2021 public meeting, the Government Records Council (“Council”) considered the March 23, 2021 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 her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking delinquent tax letters sent to property owners at Block 4.247, Lot 48 regarding a tax sale. Specifically, the Custodian certified in the Statement of Information, 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).

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 March 2021

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 1, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 30, 2021 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2020-8

v.

**Berkeley Township (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of all letters sent to property owners at Block 4.247, Lot 48 regarding a tax sale.

Custodian of Record: Karen Stallings

Request Received by Custodian: January 13, 2020

Response Made by Custodian: January 16, 2020

GRC Complaint Received: January 16, 2020

Background³

Request and Response:

On January 13, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 16, 2020, Assistant Tax Collector Nicole Major e-mailed the Custodian advising that she could not “reproduce” the letters. Ms. Major noted that several notices were sent and not returned to Berkeley Township (“Township”). On the same day, the Custodian responded in writing forwarding Ms. Major’s e-mail to the Complainant. The Complainant responded via e-mail disputing the response.

On the same day, the Custodian forwarded the Complainant’s rebuttal to Ms. Major and advised the Complainant that any questions should be directed to Tax Collector Maureen Cosgrove. The Complainant responded stating that he was filing a Denial of Access Complaint. Ms. Major e-mailed the Complainant stating that there was no denial and that the request would be handled by Ms. Cosgrove when she returned to the office the next day. Ms. Major noted that she was not sure how to reproduce the letters sought. The Complainant responded arguing that the request was already denied. The Custodian e-mailed the Complainant asking that he wait to file a

¹ No legal representation listed on record.

² Represented by Lauren R. Staiger, Esq. of Rothstein, Mandell, Strohm, Halm & Cipriani, P.C. (Lakewood, 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 until Ms. Cosgrove could address the request, noting that the seven (7) business day time period has not expired.

Denial of Access Complaint:

On January 16, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that the Township unlawfully denied access to his OPRA request. The Complainant contended that the requested letters were generated by the Township and thus disclosable under OPRA.

Supplemental Response:

On January 17, 2020, Ms Cosgrove e-mailed the Complainant stating that under N.J.S.A. 54:5-19, et seq., the Township was not required to keep copies of tax sale notices. Ms. Cosgrove stated that instead, the Township is required to maintain a tax sale list, which she attached. Ms Cosgrove stated that she was also attaching a copy of the newspaper advertisement that was in the Asbury Park Press. Ms. Cosgrove stated that she was also producing a “tax sale warning notice” like the one sought for another property because it had not yet been sent. Ms. Cosgrove noted that because the Township had 1,304 parcels, she did not have the space necessary to retain copies of the notices after they mailed to the property owners.

On the same day, the Complainant e-mailed Ms. Cosgrove again disputing her explanation. Ms. Cosgrove responded to the Complainant advising that the Township relied on the postal service to deliver letter sent to property owners in accordance with N.J.S.A. 54:5-27. The Complainant responded reiterating his disagreement with Ms. Cosgrove’s explanation. Ms. Cosgrove responded providing an additional explanation on how she updates the tax sale list as the property moves towards a tax sale. Ms. Cosgrove noted she could produce a notice from the system and has “plenty of returned mail verifying the mailing dates . . .” Ms. Cosgrove noted that attached was a screenshot from the Township’s Edmunds Tax System.

Statement of Information:

On February 7, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 13, 2020. The Custodian certified that her search involved providing the subject OPRA request to Ms. Major for a response. The Custodian affirmed that on January 16, 2020, Ms. Major advised that she could not reproduce the letters sent to the property. The Custodian certified that she responded in writing on the same day forwarding Ms. Major’s e-mail to the Complainant. The Custodian averred that despite the Township’s request that the Complainant await a supplemental response from Ms. Cosgrove, he filed the instant complaint. The Custodian affirmed that on January 17, 2020, Ms. Cosgrove disclosed to the Complainant a tax sale list and a screen shot of the property information from Edmunds Tax System.

The Custodian argued that no unlawful denial of access occurred because the Township was not required to maintain tax sale notice letters. The Custodian thus argued that no responsive records existed.

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 the matter before the Council, the Custodian denied access to the Complainant’s OPRA request because no records existed. During the pendency of this complaint, Ms. Cosgrove explained to the Complainant in multiple e-mails that she auto-generates the letters and sends them to parties without retaining a copy. The Custodian subsequently certified to these facts in the SOI, noting that the Township was not required to maintain copies of the letters.

Upon review of the arguments submitted, the GRC is persuaded that the Custodian lawfully denied access to the requested letters because no records existed. The GRC bases this conclusion on the Custodian’s certified statements and Ms. Cosgrove’s detailed explanation of the Township’s procedure for generating letters from the Edmunds Tax System and sending them to the applicable parties.⁴ It should also be noted that whether the Township was required to retain copies of the letters is of no moment; the letters were auto-generated from the Township’s Edmunds Tax system and no copies were retained. Additionally, any requirement on the Custodian and/or Ms. Cosgrove to auto-generate new letters would result in a creation of an updated letter and not the originals previously sent to the property owners. Thus, the evidence of record supports that no responsive block list exists or can be produced.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking delinquent tax letters sent to property owners at Block 4.247, Lot 48 regarding a tax sale. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking delinquent tax letters sent to property owners at Block 4.247, Lot 48 regarding a tax sale. Specifically, the Custodian certified in the Statement of Information, 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).

⁴ The GRC notes that Edmund’s Tax System manual contains instructors for autogenerating letters. <https://www.edmundsgovtech.com/wp-content/uploads/2016/06/3PropertyTax.pdf> (accessed March 12, 2021).

Prepared By: Frank F. Caruso
Executive Director

March 23, 2021