



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 27, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-103

v.

Borough of Haledon (Passaic)
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 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:

1. The Custodian and Mr. Ramadan’s failure to locate responsive records until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian and Mr. Ramadan unlawfully denied access to the record responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008).
2. While the Custodian’s insufficient search resulted in a denial of access to the responsive Log, the Custodian reasonably disclosed the Log believed to be responsive to the subject OPRA request based on the information the Complainant provided him piecemeal over the course of this adjudication. Thus, the GRC declines to order any further disclosures here based on the Complainant’s failure to “be as specific as possible.” N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 178 (App. Div. 2007).
3. The Custodian and Mr. Ramadan’s insufficient search and subsequent delay in disclosure resulted in an unlawful denial of access. N.J.S.A. 47:1A-6. However, GRC declines to order any further action because the evidence supports that the Custodian reasonably believed he was disclosing the Log sought based on the verbiage present in the Complainant’s OPRA request. Additionally, the evidence of record does not indicate that the Custodian and Mr. Ramadan’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian and Mr. Ramadan’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.



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 27th Day of July 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: July 29, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 27, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-103

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of Police Work Log (“Log”) covering the time period January 1, 1999 through December 31, 2002.

Custodian of Record: Allan R. Susen

Request Received by Custodian: April 22, 2020

Response Made by Custodian: May 5, 2020

GRC Complaint Received: May 26, 2020

Background³

Request and Response:

On April 22, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 24, 2020, Mohammad Ramadan sent a memorandum to the Custodian stating that the Borough of Haledon (“Borough”) could not disclose the responsive Log because its computer-aided dispatch (“CAD”) system only went back to October 11, 2007. On May 5, 2020, the Custodian responded in writing forwarding Mr. Ramadan’s memorandum to the Complainant.

Denial of Access Complaint:

On May 26, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to conduct a proper search for the records sought. The Complainant noted that the requested records comprised thirty-five (35) pages of hand-written ledger entries divided into seven (7) columns. The Complainant contended that the physical nature of the records should have been apparent because he suggested scanner settings the Custodian could utilize to disclose them.

¹ No legal representation listed on record.

² Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, 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.

Supplemental Submissions:

On July 13, 2020, the Custodian e-mailed Mr. Ramadan and others at the Police Department advising of the instant complaint and noting the Complainant's description of the responsive records. The Custodian asked the Police Department to advise whether such a ledger exists by July 15, 2020.

Statement of Information:

On July 20, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on April 22, 2020. The Custodian certified that his search for the records included forwarding the subject OPRA request to the Police Department. The Custodian stated that Mr. Ramadan reviewed the CAD system and could not locate any responsive records. The Custodian affirmed that he responded in writing on May 5, 2020 forwarding to the Complainant Mr. Ramadan's memorandum stating that no records existed. The Custodian contended that until receipt of the Denial of Access Complaint, he had no knowledge of the existence of a physical Log. The Custodian noted that he contacted the Police Department at that time, and was able to obtain the responsive Log, which is being disclosed as part of the SOI.

The Custodian contended that the OPRA request sought access to records that predated the Borough's CAD system. The Custodian argued that based on this, the Police Department arrived at the conclusion that no records existed. The Custodian asserted that upon receipt of the complaint, he asked the Police Department to conduct another search based on the Complainant's Denial of Access Complaint description. The Custodian averred that he was able to provide the responsive Log based on this additional information.

Additional Submissions:

On September 21, 2020, the Complainant e-mailed the GRC disputing the Custodian's SOI. The Complainant argued that the Custodian alleged that he was disclosing the "Special Police" Log. The Complainant noted that he submitted additional requests and obtained the entirety of the ledger and found significant discrepancies between the records disclosed here and those he sought. The Complainant contended that the persons identified in the Log were Office of Emergency Management ("OEM") Auxiliary Police and were not appointed as Special Police Officers during the relevant time frame. The Complainant argued that based on his Denial of Access Complaint description, as well as the forgoing, the Custodian "perpetrated a fraud by misrepresenting the OEM . . . log as the Special Police log." The Complainant this argued that the Custodian failed to perform a diligent search and further failed to disclose the responsive records.

Analysis

Insufficient Search

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response

is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Here, the Custodian initially responded to the Complainant's OPRA request stating that no records could be located because the Boroughs CAD system did not start until October 11, 2007. In the Denial of Access Complaint, the Complainant alleged that he knew the records existed in paper form and provided a description of the "bound book" where same could be located. In the SOI, the Custodian certified that he was originally advised that no records existed by Mr. Ramadan. The Custodian certified that following receipt of the complaint, he again contacted the Borough Police Department asking if such a "bound book" existed. The Borough Police Department subsequently sent the Custodian thirty (30) pages from a "bound book," which he disclosed to the Complainant as part of the SOI.⁴

Considering all evidence on the record here, the GRC finds that the facts are consistent with those present in Schneble, GRC 2007-220. The time frame identified in the OPRA request obviously pre-dated the Borough Police Department's implementation of its CAD system. Thus, it should have been obvious to both the Custodian and Mr. Ramadan that an additional search for potentially responsive hardcopy or other digitally stored records would be necessary. Such a search ultimately resulted in responsive records, but not until after the filing of this complaint. Thus, an insufficient search occurred.

Accordingly, the Custodian and Mr. Ramadan's failure to locate responsive records until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian and Mr. Ramadan unlawfully denied access to the record responsive to Complainant's OPRA request. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220.

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.

In the instant complaint, the Complainant's original OPRA request sought "Police Work Logs" from January 1, 1999 through December 31, 2002. After being denied access, the Complainant filed the instant complaint arguing that an insufficient search occurred. As part of this argument, the Complainant included additional details of the records sought:

⁴ The GRC will address the Complainant's allegations regarding that disclosure below.

“The requested records are hand written on approximately 35 pages of a bound legal size ledger book. Each page is divided into 7 columns (Date, SPO name, Supervisor initials, Assignment, Time in, Time out, and Total time).”

As part of the SOI, the Custodian disclosed thirty (30) pages of records comprising pages from what appeared to be a letter-size bound book containing six (6) columns. In response to the SOI, the Complainant disputed that the record disclosed was the Log sought. The Complainant noted that the record actually comprised information for OEM Auxiliary Police, was not legal-sized, and did not contain all columns he identified in the Denial of Access Complaint.

Notwithstanding the forgoing, the GRC’s task here is to determine whether the Custodian unlawfully denied access to the records sought at the time of his May 5, 2020 response. The GRC has already found that an insufficient search occurred based on the time frame included in the OPRA request. However, there existed little other detail for the Custodian to determine that the Complainant was seeking a specific type of Log. Further, although the Custodian included additional details in the Denial of Access Complaint, he only loosely referred to the fact that he sought a “Special Police” log. This direct statement did not occur until the Complainant accused the Custodian of “perpetrat[ing] a fraud” on September 21, 2020.

Thus, there arises a novel question of whether the Custodian and Borough Police Department reasonably believed the Log disclosed was the one responsive to the subject OPRA request. Indeed, a requestor is required to “be as specific as possible in describing the records being requested.” N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 178 (App. Div. 2007). See also Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). Here, the Complainant knew the exact Log to which he sought access (to include time frame and the exact type of personnel utilizing same) but chose to include additional details piecemeal over the course of this adjudication rather than as part of the original OPRA request. Based on this, it is reasonable to conclude that the Custodian was not given ample details to locate the exact Log sought. Instead, the Custodian was left to his own devices to determine which of the logs that existed The GRC notes that this is separate from the Custodian’s obligation to search for and locate logs that were in existence, which led to a finding that an insufficient search occurred.

Accordingly, while the Custodian’s insufficient search resulted in a denial of access to the responsive Log, the Custodian reasonably disclosed the Log believed to be responsive to the subject OPRA request based on the information the Complainant provided him piecemeal over the course of this adjudication. Thus, the GRC declines to order any further disclosures here based on the Complainant’s failure to “be as specific as possible.” N.J. Builders, 390 N.J. Super. 166, 178.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA],

and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter currently before the Council, the Custodian and Mr. Ramadan’s insufficient search and subsequent delay in disclosure resulted in an unlawful denial of access. N.J.S.A. 47:1A-6. However, GRC declines to order any further action because the evidence supports that the Custodian reasonably believed he was disclosing the Log sought based on the verbiage present in the Complainant’s OPRA request. Additionally, the evidence of record does not indicate that the Custodian and Mr. Ramadan’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian and Mr. Ramadan’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian and Mr. Ramadan’s failure to locate responsive records until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian and Mr. Ramadan unlawfully denied access to the record responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008).
2. While the Custodian’s insufficient search resulted in a denial of access to the responsive Log, the Custodian reasonably disclosed the Log believed to be responsive to the subject OPRA request based on the information the Complainant provided him piecemeal over the course of this adjudication. Thus, the GRC declines to order any further disclosures here based on the Complainant’s failure to “be as specific as possible.” N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 178 (App. Div. 2007).

3. The Custodian and Mr. Ramadan's insufficient search and subsequent delay in disclosure resulted in an unlawful denial of access. N.J.S.A. 47:1A-6. However, GRC declines to order any further action because the evidence supports that the Custodian reasonably believed he was disclosing the Log sought based on the verbiage present in the Complainant's OPRA request. Additionally, the evidence of record does not indicate that the Custodian and Mr. Ramadan's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian and Mr. Ramadan's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

July 20, 2021