



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. 2020-117

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. Mr. Ramadan’s failure to locate responsive summonses until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Mr. Ramadan unlawfully denied access to the eighty-eight (88) summonses responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008)). However, the GRC need not order disclosure of these summonses because the Custodian disclosed them via e-mail on December 9, 2020.
2. Although Mr. Ramadan’s search was insufficient, the responsive summonses were ultimately located and disclosed on December 9, 2020. Additionally, the evidence of record does not indicate that Mr. Ramadan’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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. 2020-117

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of forty (40) Computer-Aided Dispatch (“CAD”) reports and summons(es) for thirty-five (35) of them, as well as an arrest report.

Custodian of Record: Allan R. Susen

Request Received by Custodian: July 17, 2019

Response Made by Custodian: August 22, 2019

GRC Complaint Received: June 9, 2020

Background³

Request and Response:

On July 17, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On dates unknown,⁴ the Custodian allegedly sought extensions of time to respond culminating with an end date of August 26, 2019. On August 22, 2019,⁵ the Custodian allegedly responded in writing disclosing responsive CAD reports, summonses, and the arrest report.

Denial of Access Complaint:

On June 9, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted although the Custodian disclosed responsive records, he failed to include summonses associated with CAD reports 18-21034, 18-21035, 18-

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.

⁴ The Complainant noted in the Denial of Access Complaint that the Custodian sought three (3) extensions of time to respond to the OPRA request, but neither he nor the Custodian provided supporting documentation of these communications.

⁵ Ibid.

21036, 18-21037, 18-21071, 18-21088, and 18-21209. The Complainant argued that the Custodian failed to perform a sufficient search.

Statement of Information:

On July 17, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 17, 2019. The Custodian certified that his search involved forwarding the request to the Borough Police Department for a review of their systems. The Custodian certified that he responded in writing on August 22, 2019 disclosing responsive records.

The Custodian certified that at the time of his response, the Borough Police Department did not include certain summonses and further did not provide an explanation for those missing records. The Custodian stated that he attached a July 15, 2020 memorandum from Mohammad Ramadan stating that “a summons does not exist” for each of the seven (7) CAD reports identified in the Denial of Access Complaint.

Additional Submissions:

On December 8, 2020, the Complainant e-mailed the GRC refuting the Custodian’s SOI. Therein, the Complainant contended that Mr. Mohammad’s memorandum was “false” because summonses existed for six (6) of the seven (7) CAD reports. The Complainant listed eighty-eight (88) summonses by CAD report and argued that the Custodian failed to perform a “diligent[]” search for responsive records. On the same day, the Custodian confirmed receipt of the Complainant’s e-mail and noted that he forwarded same to the Borough Police Department for review. The Custodia noted that the summonses could only be provided if they could be “matched with” CAD reports. The Custodian asserted that there was no intent to withhold access, it appears that the Borough Police Department was unable to match certain CAD reports with applicable summonses. The Custodian also questioned the Complainant’s failure to identify summonses numbers at the time of the subject OPRA request.

On December 9, 2020, the Custodian e-mailed the GRC advising that he was disclosing the eighty-eight (88) summonses to the Complainant. The Custodian noted that the Complainant’s identification of specific summons numbers allows the Borough Police Department to locate and obtain 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).

Moreover, in Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013), the custodian initially responded to the complainant's request, producing four (4) responsive records and stating that no other records existed. However, after receiving the denial of access complaint, the custodian performed another search and discovered several other records. Id. In accordance with Schneble, the Council held that the custodian failed to perform an adequate initial search and unlawfully denied access to those additional records. Id.

Here, the Custodian received the subject OPRA request and responded disclosing multiple records to the Complainant. This complaint followed; wherein the Complainant contended that the Custodian failed to disclose summonses for seven (7) CAD reports. In the SOI, the Custodian certified that he disclosed those records obtained from the Borough Police Department and did not receive any explanation as to the non-existence of summonses associated with the seven (7) CAD reports. The Custodian also included a memorandum from Mr. Ramadan stating that summonses did not exist for the CAD reports. The Complainant responded to the SOI identifying eighty-eight (88) summonses corresponding to six (6) of the CAD reports. The Custodian forwarded that e-mail to the Borough Police Department and disclosed all eighty-eight (88) summonses on December 9, 2020.

The facts here are on point with those in Weiner, 2013-52; thus, it follows that an insufficient search occurred in the instant complaint. However, the evidence in the record indicates that this insufficient search rests with Mr. Ramadan at the Borough Police Department. In reaching this conclusion, the GRC relies on the Custodian's SOI certification regarding the search conducted, as well as Mr. Ramadan's memorandum regarding his inability to locate summonses. The GRC notes that because the CAD reports did not identify the specific summonses therein, a more complex search could have resulted. However, it is compelling that the Complainant was able to identify specific summonses numbers, yet Mr. Ramadan was unable to determine their applicability to the CAD report until after the filing of the instant complaint.

Accordingly, Mr. Ramadan's failure to locate responsive summonses until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Mr. Ramadan unlawfully denied access to the eighty-eight (88) summonses responsive to Complainant's OPRA request. N.J.S.A. 47:1A-6; Weiner, 2013-52 (citing Schneble, GRC 2007-220). However, the GRC need not order disclosure of these summonses because the Custodian disclosed them via e-mail on December 9, 2020.

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)).

Here, although Mr. Ramadan’s search was insufficient, the responsive summonses were ultimately located and disclosed on December 9, 2020. Additionally, the evidence of record does not indicate that Mr. Ramadan’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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. Mr. Ramadan’s failure to locate responsive summonses until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Mr. Ramadan unlawfully denied access to the eighty-eight (88) summonses responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (*citing* Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008)). However, the GRC need not order disclosure of these summonses because the Custodian disclosed them via e-mail on December 9, 2020.
2. Although Mr. Ramadan’s search was insufficient, the responsive summonses were ultimately located and disclosed on December 9, 2020. Additionally, the evidence of record does not indicate that Mr. Ramadan’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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