



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

November 9, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-204

v.

Borough of Haledon (Passaic)
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 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 did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that he disclosed to the Complainant the responsive list on August 14, 2020. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

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 9th Day of November 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: November 15, 2021

New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 9, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-204

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of a list of “all accounts and account numbers on the Paychex system.”

Custodian of Record: Allan Susen
Request Received by Custodian: June 30, 2020
Response Made by Custodian: August 14, 2020
GRC Complaint Received: October 5, 2020

Background³

Request and Response:

On June 30, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 14, 2020, the Custodian responded in writing stating that he was disclosing the responsive list.

Denial of Access Complaint:

On October 5, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the Custodian, after obtaining four time extensions,⁴ responded on August 14, 2020 providing the responsive list. The Complainant contended that notwithstanding this assertion, no record was attached to said response.

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 identified multiple dates certain to which the Custodian sought an extension. However, neither the Complainant nor Custodian included copies of the correspondence wherein the extensions were taken.

Statement of Information:

On October 28, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the subject OPRA request on June 30, 2020. The Custodian certified that he obtained multiple time extensions to respond to the request and responded in writing on August 14, 2020 disclosing the responsive list. The Custodian further certified that upon receipt of the instant complaint, he “reopened” the subject OPRA request and again disclosed the responsive list to the Complainant on October 21, 2020.

The Custodian noted that issues with employee turnover, remote work arrangements due to the public health emergency, and the Borough of Haledon’s (“Borough”) Payroll Clerk’s resignation in June 2020 factored into the additional time needed to respond to Complainant’s OPRA request. The Custodian asserted that the Borough was taking active steps to gain access to its payroll system. The Custodian noted that in addition to the issues outlined above, the Borough received 623 OPRA requests to date and that twenty-six (26) of them remained open and active. The Custodian averred that the list he disclosed both on August 14, 2020 and October 21, 2020 was attached to the SOI.

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.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. The Council held that the custodian’s certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian’s burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Here, following multiple extensions, the Custodian responded in writing on August 14, 2020 purportedly disclosing the responsive list to the Complainant. Thereafter, the Complainant filed the instant complaint contending that the Custodian did not attach the responsive list to his original response e-mail. In the SOI, the Custodian certified that he disclosed the list to the Complainant on August 14, 2020. The Custodian further affirmed that notwithstanding the prior disclosure, he again disclosed the list to the Complainant on October 21, 2020 after receiving the instant complaint.

The GRC has reviewed the arguments of the parties and documentation submitted in support of same. In weighing the submissions, the GRC is persuaded that the Custodian provided

the responsive list on August 14, 2020 and that no unlawful denial of access occurred. This determination is based on undisputed documentation from the Borough's OPRA processing system showing that the custodian responded to the request by email on August 14, 2020. Also, the Custodian's certified statement that he disclosed the responsive list at the time he made the initial response to request further supports this finding. Further, there is no evidence in the record to support that the Complainant never received the responsive record, or that he contacted Custodian prior to this complaint filing alleging that the list was not attached. Thus, this complaint closely mirrors the facts Danis, 2009-156 and a finding that no unlawful denial of access occurred is appropriate.

Accordingly, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that he disclosed to the Complainant the responsive list on August 14, 2020. Danis, GRC 2009-156, *et seq.*; Burns, 2005-68; Holland, 2014-63, *et seq.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that he disclosed to the Complainant the responsive list on August 14, 2020. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Prepared By: Frank F. Caruso
Executive Director

October 26, 2021