



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 30, 2021 Government Records Council Meeting

Ali S. Morgano
Complainant

Complaint No. 2020-53

v.

City of Newark (Essex)
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 because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging an unlawful denial of access to the requested records, he failed to state a claim on which the Council could grant relief. See Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

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**

**Ali S. Morgano¹
Complainant**

GRC Complaint No. 2020-53

v.

**City of Newark (Essex)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of:

1. All citizen's complaints filed against Officer Elbert N. Eutsey while employed by the Newark Police Department ("NPD") from November 25, 1968 through March 1, 1998.
2. All internal disciplinary reports filed against Office Eutsey for the same time frame.

Custodian of Record: Kenneth Louis

Request Received by Custodian: February 13, 2020

Response Made by Custodian: February 18, 2020

GRC Complaint Received: February 25, 2020

Background³

Request and Response:

On February 4, 2020, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On February 18, 2020, Samora F. Noguera, Esq. responded in writing on behalf of the Custodian denying the Complainant's OPRA request under N.J.S.A. 47:1A-10. The Custodian noted that this response "makes no representation" that any such complaints exist; rather, any responsive records would be exempt from disclosure under OPRA.

Denial of Access Complaint:

On February 25, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant failed to provide any argument or support for why he believed he was unlawfully denied access to the records.

¹ legal representation listed on record.

² Represented by Kenyatta Stewart, Esq. (Newark, 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.

Statement of Information:

On June 5, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on February 13, 2020. The Custodian certified that Mr. Noguera responded in writing on his behalf on February 18, 2020 denying the subject OPRA request.

The Custodian contended that he lawfully denied access to the subject OPRA request because, to the extent that any records existed, they were exempt from disclosure under OPRA. N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 591 (2011). The Custodian further argued that any responsive records would be exempt from disclosure under the Attorney General’s Internal Affairs Policy and Procedures. O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 385 (App. Div. 2009); Simmons v. City of Newark (Essex), GRC Complaint No. 2015-329 (April 2017) (aff’d 2018 N.J. Super. Unpub. LEXIS 2313 (App. Div. 2018)). The Custodian argued that the Complainant here made substantively the same request that the Council addressed in Simmons. The Custodian argued that both the Council and court have already upheld the denial of access presented here.

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 Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014), the complainant filed a Denial of Access Complaint devoid of any arguments regarding the alleged denial of access to records, whether factual or otherwise. The custodian submitted an SOI containing his arguments concerning the alleged denial. Notwithstanding, the Council determined that the complaint should be dismissed because the complainant failed to state a claim. Citing Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Alterman v. Sussex Cnty. Sherriff’s Office, GRC Complaint No 2013-353 (September 2014).

Here, the Complainant submitted his Denial of Access Complaint without any arguments. In his “Detail Summary” and “Records Denied” list, the Complainant simply stated “[s]ee [a]ttachment.” The Complainant did not provide any other commentary allowing the GRC to even infer the relevant issues. Similar to the filing in Murphy, the Complainant failed to argue any reasons as to why he believed he was unlawfully denied, what records he believed he should have

received, and/or the relief sought by filing the instant complaint. As such the Complainant failed to state a claim on which the GRC could grant relief.⁴

Accordingly, because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging an unlawful denial of access to the requested records, he failed to state a claim on which the Council could grant relief. See Murphy, GRC 2014-76. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging an unlawful denial of access to the requested records, he failed to state a claim on which the Council could grant relief. See Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

March 23, 2021

⁴ The GRC notes that consistent with Simmons, as well as other prevailing case law, the Council has routinely held that citizen complaints and other officer disciplinary records are exempt from disclosure under OPRA. See, e.g. Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004); Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010).