



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 30, 2023 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2021-122

v.

Berkeley Township (Ocean)
Custodian of Record

At the May 30, 2023 public meeting, the Government Records Council (“Council”) considered the May 23, 2023 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’s initial disclosure of only the log for Councilman Signorile’s Township-issued e-mail was appropriate based on a plain reading of the subject OPRA request. Thus, the Custodian did not unlawfully deny access to any additional logs subsequently disclosed because it was not reasonable to assume the Complainant was seeking them. 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 May 2023

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: June 6, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 30, 2023 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2021-122

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of “a log of sent and received e-mails for [Councilman] Michael Signorile from February 1, 2021 to May 5, 2021 which includes the sender name, recipient name(s), date, and subject line.”

Custodian of Record: Karen Stallings

Request Received by Custodian: May 5, 2021

Response Made by Custodian: May 13, 2021

GRC Complaint Received: June 11, 2021

Background³

Request and Response:

On May 5, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 13, 2021, the Custodian responded in writing disclosing to the Complainant an .xlsx file of received e-mails and noted that Councilman Signorile did not send any e-mails during the identified time frame. The Custodian further noted that Councilman Signorile did not have a Township e-mail address during the time period April 9, 2021 through May 11, 2021.

Denial of Access Complaint:

On June 11, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to disclose e-mail logs identifying e-mails sent and received between April 9, 2021 and May 11, 2021. The Complainant argued that he brought his dispute to the Custodian’s attention but was later advised that no additional records existed. The Complainant noted that he subsequently

¹ No legal representation listed on record.

² Represented by Robin La Bue, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.A. (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.

submitted another OPRA request for Mayor Carmen Amato's e-mail log and within the disclosed record found "sent" e-mails from Councilman Signorile during the aforementioned time frame. The Complainant thus contended that an unlawful denial of access occurred.

On June 16, 2021, the Complainant e-mailed the GRC advising that he wished to add two (2) additional documents to his Denial of Access Complaint. The Complainant noted that in response to separate OPRA requests, the Custodian disclosed two (2) e-mails sent by Councilman Signorile from other accounts. The Complainant noted that these e-mails present additional evidence that the Custodian unlawfully denied access to e-mail log information she alleged did not exist.

Statement of Information:

On June 22, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on May 5, 2021. The Custodian certified that her search included contacting Costal Solutions, Berkeley Township's ("Township") Information Technology ("IT") vendor, to create the responsive log. The Custodian certified she received the log on May 11, 2021 and responded in writing on May 13, 2021 disclosing same.

The Custodian contended that she complied with the OPRA request as stated and the same as she has processed and responded to many similar OPRA requests received from the Complainant in the past. The Custodian argued that the Complainant did not specify a particular e-mail address or seek logs for multiple accounts. The Custodian asserted that although Councilman Signorile had a Township e-mail address, it is obvious from this complaint that he was also using other personal e-mail accounts to conduct Township business. The Custodian argued that instead of clarifying the subject OPRA request to include additional e-mail accounts, the Complainant filed this complaint. The Custodian noted that the Township was working to obtain a log of the e-mails sent from Councilman Signorile's personal accounts.

The Custodian argued that she was not required to conduct an open-ended search of the Township's files to satisfy the instant OPRA request. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian contended that she complied with the OPRA request by disclosing the log retrieved from the Township's IT vendor.

Supplemental Response:

On June 25, 2021, the Custodian responded in writing disclosing additional logs from Councilman Signorile's personal e-mail accounts because of the instant complaint. The Custodian noted that she was disclosing these logs although the Complainant did not specify them. The Custodian noted that going forward, the Township would only provide those records specifically identified. On the same day, the Complainant responded arguing that multiple e-mail accounts do not need to be specified: a request for e-mail logs of an individual requires a custodian to disclose all logs containing official business.

Additional Submissions:

On March 13, 2023, the GRC e-mailed the Complainant seeking an update on whether he received any additional e-mail logs. The Complainant responded advising that he had no record of receiving additional logs from the Township. On March 14, 2023, Custodian's Counsel e-mailed the GRC advising that the Custodian disclosed additional e-mail logs on June 25, 2021 and attached the relevant correspondence. The Complainant responded confirming that he did, in fact, receive those records.

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 this matter, the Complainant sought access to "a log of sent and received e-mails for [Councilman] Michael Signorile from February 1, 2021 to May 5, 2021" The Custodian responded disclosing an e-mail log for Councilman Signorile's Township-issued e-mail account. This complaint followed, wherein the Complainant argued that the Custodian failed to disclose additional responsive e-mail logs and provided supporting documentation to show that Councilman Signorile sent e-mails not captured in the disclosed log. In the SOI, the Custodian argued that she disclosed the e-mail log sought and that the Complainant failed to identify multiple e-mail accounts or clarify his request after her response. The Custodian noted that the complaint alerted her to the Complainant's intention of seeking logs for all of Councilman Signorile's e-mail accounts and that she was attempting to obtain the additional logs. The Custodian later disclosed additional logs from Councilman Signorile's personal accounts on June 25, 2021 and the Complainant confirmed receipt thereof on March 14, 2023.

Because the Custodian has ultimately provided responsive e-mail logs to the Complainant's satisfaction,⁴ the only issue before the GRC is whether she unlawfully denied access to the additional e-mail logs based on an interpretation of the subject OPRA request. The Complainant contended he sought an e-mail log for all existent accounts and the Custodian failed to disclose them. However, the Custodian argued that she interpreted the OPRA request to seek only Councilman Signorile's Township-issued account log and it did not identify multiple accounts. The Custodian also noted that her response here was like her response to numerous comparable OPRA requests from the Complainant.

⁴ Because Councilman Signorile's personal e-mail logs were ultimately disclosed, the GRC will not address whether the Custodian was required to obtain and provide them. However, it should be noted that the Township's responsibility to release Council Signorile's personal e-mail logs, which obviously contain a mixture of official and personal business, is unclear. See e.g. Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2011-280 (June 2015) (holding that the use of a private cell phone during work hours or use to make work-related calls does not convert the underlying bill into a "government record" under OPRA.).

Upon review of the submitted OPRA request and the response, the GRC is persuaded that the Custodian's action of disclosing only Councilman Signorile's Township-issued e-mail log on May 13, 2021 was reasonable based on a plain reading of the subject OPRA request. Specifically, the Complainant did not specify in his OPRA request that he sought e-mail logs from multiple e-mail accounts. Instead, the GRC is persuaded that the Complainant changed his own interpretation of the OPRA request only after obtaining additional logs showing the existence of sent e-mails not memorialized in the already disclosed log. However, instead of either clarifying the subject OPRA request or submitting a new one more clearly stating that he was seeking logs from multiple accounts, the Complainant opted to file this complaint alleging that his original request sought logs from multiple accounts. It was the complaint filing that provided the Custodian the necessary clarification to obtain and disclose additional e-mail logs from Councilman Signorile's personal accounts. Thus, it cannot be said that the original OPRA request offered the Custodian reasonable clarity to prompt her to search for logs from all Township and personal e-mail accounts through which Councilman Signorile was conducting official business.

Accordingly, the Custodian's initial disclosure of only the log for Councilman Signorile's Township-issued e-mail was appropriate based on a plain reading of the subject OPRA request. Thus, the Custodian did not unlawfully deny access to any additional logs subsequently disclosed because it was not reasonable to assume the Complainant was seeking them. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian's initial disclosure of only the log for Councilman Signorile's Township-issued e-mail was appropriate based on a plain reading of the subject OPRA request. Thus, the Custodian did not unlawfully deny access to any additional logs subsequently disclosed because it was not reasonable to assume the Complainant was seeking them. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

May 23, 2023