



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

February 29, 2024 Government Records Council Meeting

Jacques J. Guire III
Complainant

Complaint No. 2021-306

v.

West Long Branch Fire Company No. 2 (Somerset)
Custodian of Record

At the February 29, 2024 public meeting, the Government Records Council (“Council”) considered the February 20, 2024 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, through West Long Branch Fire Company No. 2 and Ms. Baldanza, may have unlawfully denied access to undisclosed meeting minutes responsive to OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Specifically, the evidence of record is inconclusive as to the existence and disclosability of minutes from 2001 through November 2018. Thus, the Custodian shall, in cooperation with Ms. Baldanza, search for and disclose any additional outstanding sets of minutes within the identified time frame. Should no additional minutes exist, the Custodian and Ms. Baldanza must provide certifications to the Complainant stating such.
2. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 29th Day of February 2024

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: March 4, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 27, 2024 Council Meeting**

**Jacques J. Guire, III¹
Complainant**

GRC Complaint No. 2021-306

v.

**West Long Branch Fire Company No. 2 (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. West Long Branch Fire Company No. 2 (“WLBFC”) meeting minutes from 2001 to present.
2. WLBFC Executive Board meeting minutes from 2001 to present.
3. All internal and external communications regarding the Complainant’s ongoing suspension of membership, including those between the WLBFC and the Borough of West Long Branch (“Borough”) or its attorney.
4. All communications “that led up to” the Complainant’s suspension.
5. All internal and external communications regarding membership reinstatement, suspension, membership status, and leaves of absence for the Complainant from 2007 to 2014, including all minutes from regular, investigation and executive sessions.

Custodian of Record: Carolina J. Santos³

Request Received by Custodian: October 13, 2021

Response Made by Custodian: October 21, 2021

GRC Complaint Received: November 19, 2021

Background⁴

Request and Response:

On October 13, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 21, 2021, the Custodian responded in writing stating that no responsive records existed for item Nos. 1, 2, 4, and

¹ No legal representation listed on record.

² The Borough of West Long Branch (Monmouth) is represented by James L. Plosia, Jr., Esq. of Plosia, Cohen, LLC (Chester, NJ).

³ Ms. Santos is the “Custodian of Record” for the Borough of West Long Branch (Monmouth).

⁴ 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.

Jacques J. Guire, III v. West Long Branch Fire Company No. 2 (Monmouth), 2021-306 – Findings and Recommendations of the Executive Director

5. The Custodian also disclosed two (2) pages of records responsive to item No. 3. On the same day, the Complainant responded noting that the Custodian acted as the “records administrator” for WLBFC and that she was required to obtain and disclose records from them. See Lamb v. Lavallette Volunteer Fire Co., Docket No. OCN-L-2984-16. On October 22, 2021, the Custodian e-mailed the Complainant advising that she forwarded the subject OPRA request to WLBFC.

On November 4, 2021, WLBFC Secretary Mauro V. Baldanza sent a letter to the Custodian acknowledging receipt of the Complainant’s OPRA request and advising that WLBFC was not subject to OPRA and would not disclose responsive records. On November 5, 2021, the Custodian responded to the Complainant attaching WLBFC’s November 4, 2021 letter. On the same day, the Complainant sent a letter to the Custodian disputing that WLBFC was not a “public agency” for purposes of OPRA in accordance with Lamb and that a failure to disclose records would result in litigation.

Denial of Access Complaint:

On November 19, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed that WLBFC was not a “public agency” for purposes of OPRA based on Lamb, Docket No. OCN-L-2984-16. The Complainant stated that there, the trial court held that a volunteer fire company was a “public agency” for purposes of OPRA and that the municipal clerk was the designated custodian therefor (citing Paff v. N.J. Fireman’s Ass’n, 431 N.J. Super. 278 (App. Div. 2013)). The Complainant thus asserted that the Custodian had an obligation to obtain records from WLBFC and disclose them.

Supplemental Response:⁵

On December 1, 2021, Mr. Baldanza sent a letter to the Custodian forwarding records responsive to OPRA request item Nos. 1 and 4. Mr. Baldanza further stated that no records responsive to OPRA request item Nos. 2, 3, and 5 existed. On the same day, the Custodian disclosed to the Complainant twenty-eight (28) pages of minutes responsive to OPRA request item No. 1 and two (2) pages of correspondence responsive to OPRA request item No. 4.

Statement of Information:

On January 27, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 13, 2021. The Custodian certified that she responded in writing on October 21, 2021 disclosing records responsive to OPRA request item No. 3 and denying the remaining request items under the WLBFC assertion that they were not a “public agency” under OPRA. The Custodian affirmed that WLBFC subsequently memorialized their position in a November 4, 2021 letter, which she forwarded to the Complainant on November 5, 2021. The Custodian stated that following the filing of this complaint, the Borough obtained special counsel, who advised that WLBFC was a “public agency” subject to the provisions of OPRA. The Custodian certified that based on this, WLBFC

⁵ On November 24, 2021, this complaint was referred to mediation. On January 14, 2022, this complaint was referred back to the GRC for adjudication.

Jacques J. Guire, III v. West Long Branch Fire Company No. 2 (Monmouth), 2021-306 – Findings and Recommendations of the Executive Director

produced thirty-two (32) pages of responsive records that she disclosed to the Complainant on December 1, 2021.

The Custodian contended that she followed standard procedure to respond to the subject OPRA request and communicated regularly with the Complainant thereafter. The Custodian asserted that her actions ultimately led to the production of all responsive records in WLBFC's possession.

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.

Initially, the GRC notes that the Complainant initially filed this complaint disputing the Custodian's response that WLBFC was not a "public agency" for purposes of OPRA. However, during the pendency of said complaint, WLBFC changed their position based on advice of special counsel obtained by the Borough and disclosed multiple responsive records. While it is presently unclear whether Lamb, Docket No. OCN-L-2984-16 has precedential value, the GRC declines to address the issue at this time because WLBFC has acquiesced to its status as a "public agency" for purposes of OPRA. The GRC will thus proceed to address whether the Custodian unlawfully denied access to the records disclosed once WLBFC changed its position.

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). However, in Macek v. Bergen Cnty. Sheriff's Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019), the Council held that evidence contained in the record suggested that additional responsive records may exist. Based on this, the Council ordered the custodian to perform another search and submit a certification regarding the results of that search.

Here, the Complainant submitted his OPRA request on October 13, 2021. On October 21, 2021, the Custodian disclosed correspondence responsive to OPRA request item No. 3 and stated that no additional records existed. After settling the conflict over whether WLBFC was a "public agency" for purposes of OPRA, Ms. Baldanza supplied responsive records to the Custodian. In turn, the Custodian responded on December 1, 2021 disclosing records responsive to OPRA request item Nos. 1 and 4 while again stating that no additional records to the other items existed.

In reviewing those records disclosed, the GRC is not satisfied that the evidence of record supports that all records responsive to OPRA request item No. 1 were disclosed to the Complainant. That item sought all meeting minutes from 2001 to the date of the OPRA request. In turn, the Custodian received from WLBFC sets of minutes covering the time period from December 2018 to November 2021. In the SOI, the Custodian noted that these records were disclosed, but provided no explanation as to whether minutes covering the time period 2001 through November 2018 exist or were not disclosable under a specific lawful basis. Further, the record is devoid of any other statements or certifications, either from the Custodian or WLBFC, as to the existence of those minutes. Based on this, it is appropriate to follow the Council's holding in Macek, GRC 2017-156, *et seq.* and require additional action on OPRA request item No. 1.⁶

Accordingly, the Custodian, through WLBFC and Ms. Baldanza, may have unlawfully denied access to undisclosed meeting minutes responsive to OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek, GRC 2017-156, *et seq.* Specifically, the evidence of record is inconclusive as to the existence and disclosability of minutes from 2001 through November 2018. Thus, the Custodian shall, in cooperation with Ms. Baldanza, search for and disclose any additional outstanding sets of minutes within the identified time frame. Should no additional minutes exist, the Custodian and Ms. Baldanza must provide certifications to the Complainant stating such.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian, through West Long Branch Fire Company No. 2 and Ms. Baldanza, may have unlawfully denied access to undisclosed meeting minutes responsive to OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff's Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Specifically, the evidence of record is inconclusive as to the existence and disclosability of minutes from 2001 through November 2018. Thus, the Custodian shall, in cooperation with Ms. Baldanza, search for and disclose any additional outstanding sets of minutes within the identified time frame. Should no additional minutes exist, the Custodian and Ms. Baldanza must provide certifications to the Complainant stating such.

2. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

Prepared By: Frank F. Caruso
Executive Director

February 20, 2024

⁶ The GRC does not address the remaining OPRA request items because the record does not contain similar evidence that additional records responsive thereto may exist.

Jacques J. Guire, III v. West Long Branch Fire Company No. 2 (Monmouth), 2021-306 – Findings and Recommendations of the Executive Director