



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 18, 2021 Government Records Council Meeting

Huafang Cui
Complainant

Complaint No. 2021-82

v.

NJ Department of Labor & Workforce Development
Custodian of Record

At the May 18, 2021 public meeting, the Government Records Council (“Council”) considered the May 11, 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. Because the GRC attempted on two occasions to obtain a completed SOI from the Custodian, the Custodian’s failure to provide a completed SOI to the GRC hindered the GRC’s obligation to “receive, hear, review and adjudicate [the] complaint” pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(a). See Kovacs v. Irvington Police Dep’t (Essex), 2014-196, GRC Complaint No. 2014-196 (January 2015).
2. Because the documentation submitted by the Complainant to the GRC failed to prove an OPRA request was submitted to the New Jersey Department of Labor & Workforce Development, this complaint is without any reasonable factual basis to pursue and shall be dismissed. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-7(e).

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 18th Day of May 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: May 20, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 18, 2021 Council Meeting**

**Huafang Cui¹
Complainant**

GRC Complaint No. 2021-82

v.

**New Jersey Department of Labor & Workforce Development²
Custodial Agency**

Records Relevant to Complaint: Copies of “student records for the medical massage therapy program at the Bergen County Vocational Training Center (BCVTC), an ‘Adult Private Career School’ that was approved by the NJ DoE and DoL to operate from 2012 to 2019. The school closed in May of 2019.”

Custodian of Record: Hugh Bailey

Request Received by Custodian: Purportedly submitted on December 25, 2020

Response Made by Custodian: No written response on file

GRC Complaint Received: April 19, 2021

Background³

Request and Response:

On December 25, 2020, the Complainant stated that he submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant stated that he did not receive a response from the Custodian.

Denial of Access Complaint:

On April 19, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted his request to the Custodian at the New Jersey Department of Labor on December 25, 2020, that it was delivered on January 2, 2021, and that he did not receive a response from the Custodian. As such, the Complainant alleged that he was unlawfully denied access to the requested records.⁴

¹ No legal representation listed on record.

² No legal representation listed on record.

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 attached numerous documents, certificates and brochures that are not relevant to the adjudication of this complaint.

Huafang Cui v. New Jersey Department of Labor & Workforce Development, 2021-82 – Findings and Recommendations of the Executive Director

Statement of Information:

On April 23, 2021, the GRC sent the Custodian a request for the Statement of Information (“SOI”). The Custodian failed to submit the SOI to the GRC.

On May 3, 2021, the GRC sent the Custodian a notice that if the GRC did not receive the SOI within three (3) business days, the complaint would proceed to adjudication based only upon the information contained within the complaint. The Custodian failed to submit the SOI, or otherwise respond to the GRC.

Analysis

Failure to Submit SOI

In furtherance of the GRC’s obligation to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to government records[,]” pursuant to N.J.S.A. 47:1A-7(b), the GRC requires a custodian to submit a completed SOI. The New Jersey Administrative Code provides:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

N.J.A.C. 5:105-2.4(f).

In Kovacs v. Irvington Police Dep’t (Essex), 2014-196, GRC Complaint No. 2014-196 (January 2015), the GRC sent two requests to the custodian seeking submission of the SOI; however, the custodian never submitted the SOI. The Council subsequently determined that the custodian violated N.J.A.C. 5:105-2.4(a).

Here, the GRC attempted on April 23, 2021, and again May 3, 2021, to obtain a completed SOI from the Custodian. However, the Custodian never submitted a completed SOI or otherwise responded to the GRC.

Therefore, because the GRC attempted on two occasions to obtain a completed SOI from the Custodian, the Custodian’s failure to provide a completed SOI to the GRC hindered the GRC’s obligation to “receive, hear, review and adjudicate [the] complaint” pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(a). See Kovacs, GRC 2014-196.

No Correspondence Received by the Custodian

OPRA Provides that “A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian.” N.J.S.A. 47:1A-5(g). OPRA also provides that “The council shall make a

determination as to whether the complaint is within its jurisdiction or frivolous or *without any reasonable factual basis.*” N.J.S.A. 47:1A-7(e) (emphasis added).

The GRC examined the Denial of Access Complaint submitted by the Complainant. There is no evidence within the complaint that the Complainant submitted an OPRA request to the Department of Labor & Workforce Development. The only OPRA request form attached to the complaint was a Department of Environmental Protection (“DEP”) Government Records Form, wherein the Complainant requested the above-mentioned records. The Complainant attached a United States Postal Service tracking receipt which indicated the DEP OPRA request was delivered to the New Jersey State House, Trenton, N.J. on January 2, 2021. Moreover, there is no evidence of record indicating there was any other written request invoking OPRA submitted to the Department of Labor & Workforce Development.

Therefore, because the documentation submitted by the Complainant to the GRC failed to prove an OPRA request was submitted to the New Jersey Department of Labor & Workforce Development, this complaint is without any reasonable factual basis to pursue and shall be dismissed. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-7(e).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the GRC attempted on two occasions to obtain a completed SOI from the Custodian, the Custodian’s failure to provide a completed SOI to the GRC hindered the GRC’s obligation to “receive, hear, review and adjudicate [the] complaint” pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(a). See Kovacs v. Irvington Police Dep’t (Essex), 2014-196, GRC Complaint No. 2014-196 (January 2015).
2. Because the documentation submitted by the Complainant to the GRC failed to prove an OPRA request was submitted to the New Jersey Department of Labor & Workforce Development, this complaint is without any reasonable factual basis to pursue and shall be dismissed. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-7(e).

Prepared By: John E. Stewart
Staff Attorney

May 11, 2021