



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

October 3, 2023 Government Records Council Meeting

Andrei Alexeev
Complainant

Complaint No. 2022-4

v.

Ewing Township (Mercer)
Custodian of Record

At the October 3, 2023 public meeting, the Government Records Council (“Council”) considered the September 26, 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 Township Tax Assessor’s failure to locate an e-mail responsive to the Complainant’s OPRA request until after receipt of the Denial of Access Complaint resulted in an insufficient search, causing the Custodian to unlawfully deny access to the record. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the GRC need not order disclosure of the record because the Custodian disclosed same to the Complainant on January 7, 2022.

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 3rd Day of October 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: October 10, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 3, 2023 Council Meeting**

**Andrei Alexeev¹
Complainant**

GRC Complaint No. 2022-4

v.

**Ewing Township (Mercer)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of:

1. “Compliance plan (Form CP), dated November 15, 2020, and all supporting documents.
2. Proof of delivery of Form CP with the Mercer County Board of Taxation, including email delivery.
3. Copies of explanation, analysis, and supporting documentation submitted to the Board of Taxation to support why only 5 neighborhoods were selected and the rest of the Township was not selected for adjustment pursuant to assessment maintenance.
4. List of properties for which exterior inspection was completed in the areas of the municipality being changed.
5. Copies of emails and correspondence between Tax Assessor and Board of Taxation regarding assessment maintenance for 2020 that were sent between January 1, 2019 and December 31, 2020.
6. Copies of emails and correspondence between Tax Assessor and Township Business Administrator regarding assessment maintenance for 2020 that were sent between January 1, 2019 and December 31, 2020.
7. Copies of emails and correspondence to the Mayor or any Council Member regarding the assessment maintenance for 2020 that were sent between January 1, 2019 and December 31, 2020.”³

Custodian of Record: Kim J. Macellaro

Request Received by Custodian: April 8, 2021

Responses Made by Custodian: April 16, 2021

GRC Complaint Received: January 6, 2022

¹ No legal representation listed on record.

² Represented by Michael A. Cedrone, Esq. of Stevens & Lee (Lawrenceville, NJ).

³ In the Record Request Information section of the OPRA request form, at the end of request item number 7, the Complainant wrote “Tax appeal.” It does not appear that this was part of the OPRA request because the Complainant enumerated all other request items. In any event, this was not an item to which the Complaint alleged he was denied access.

Background⁴

Request and Response:

On April 8, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 16, 2021, the Custodian responded in writing informing the Complainant that she had attached all records responsive to the request.

Denial of Access Complaint:

On January 6, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on April 16, 2021, the Custodian responded to his April 8, 2021 OPRA request but omitted a responsive e-mail from the Ewing Tax Assessor to the Mercer County Board of Taxation Administrator dated November 15, 2020. The Complainant stated that he discovered the omitted e-mail in response to a discovery request made during the tax appeal case.

Statement of Information:

On January 28, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 8, 2021. The Custodian certified that upon receipt of the request, she forwarded same to the Tax Assessor to search for responsive records. The Custodian certified that the Tax Assessor provided her with all records responsive to the request, and she disclosed the records to the Complainant on April 16, 2021.

The Custodian certified that, although she was of the belief that she disclosed all responsive records to the Complainant, she learned upon receipt of the within complaint on January 6, 2022, that the Tax Assessor omitted one (1) item from the responsive records. The Custodian certified that the omitted item was an e-mail from Jeffrey Burd to Tina Rooney and Erica Brandmaier dated November 15, 2020, regarding “Compliance Plan Application.” The Custodian certified that on January 7, 2022, she e-mailed a letter to the Complainant attaching said e-mail. The Custodian in her letter to the Complainant stated, “. . . the Township was unaware, due to a simple oversight that its reply to your OPRA request was not fully responsive, and the Township would have readily produced the document had you contacted the Clerk’s Office sooner and notified us of the mistake.” The Custodian cited Grieco v. Borough of Haddon Heights, 449 N.J. Super. 513 (Law Div. 2015), wherein the court found that the Borough in response to an OPRA request inadvertently failed to forward to the requestor one of the requested records. The Custodian certified that the court in Grieco determined “. . . the cooperative spirit of OPRA would seem to require some form of a follow up request, in the form of a phone call, letter, or e-mail, to notify the municipality that a mistake was made.”⁵

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.

⁵ The Custodian referenced Grieco, 449 N.J. Super. 513 at 524.

Analysis

Insufficient Search

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. However, the complainant included e-mails responsive to the request with the Denial of Access Complaint. After receipt of the complaint, the custodian conducted a further search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records.

Here, the Custodian certified in the SOI that, based upon the nature of the requested records, she forwarded the OPRA request to the Tax Assessor to conduct a search for responsive records. The Custodian certified that after she obtained the responsive records from the Tax Assessor, she disclosed them to the Complainant. The Custodian further certified that only upon receipt of the complaint on January 6, 2022, did she learn that a responsive e-mail dated November 15, 2020 was not disclosed to the Complainant.

Therefore, the Township Tax Assessor's failure to locate an e-mail responsive to the Complainant's OPRA request until after receipt of the Denial of Access Complaint resulted in an insufficient search, causing the Custodian to unlawfully deny access to the record. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC need not order disclosure of the record because the Custodian disclosed same to the Complainant on January 7, 2022.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Township Tax Assessor's failure to locate an e-mail responsive to the Complainant's OPRA request until after receipt of the Denial of Access Complaint resulted in an insufficient search, causing the Custodian to unlawfully deny access to the record. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the GRC need not order disclosure of the record because the Custodian disclosed same to the Complainant on January 7, 2022.

Prepared By: John E. Stewart

August 22, 2023