



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 25, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2022-204

v.

Borough of Haledon (Passaic)
Custodian of Record

At the July 25, 2023 public meeting, the Government Records Council (“Council”) considered the July 18, 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:

1. The Custodian’s failure to locate and disclose multiple case reports and a CAD report responsive to the Complainant’s OPRA request until after a more reasonable search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian unlawfully denied access to that spreadsheet. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). However, the GRC need not order disclosure of the missing case reports because same was disclosed on June 7, 2022.
2. The Custodian’s failure to locate summonses responsive to CAD Report No. 16-19099 through Mr. Freitas was not the result of an insufficient search. Instead, Mr. Freitas was hindered by a search function issue with NJ E-Tickets and he could not have reasonably identified the responsive summonses without some identification of the actual summons numbers. Thus, this portion of the complaint differs from Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) and no insufficient search occurred.

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 25th Day of July 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: July 27, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 25, 2023 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2022-204

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of twenty-nine (29) computer-aided dispatch (“CAD”) reports, thirty (30) summonses associated with those CAD reports, and twelve (12) “case report[s]”.

Custodian of Record: Allan Susen³

Request Received by Custodian: *(Date)*

Response Made by Custodian: *(Date)*

GRC Complaint Received: May 18, 2022

Background⁴

Request and Response:

On May 9, 2022 at 6:06 p.m., the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 17, 2022, the Custodian responded in writing disclosing multiple responsive records.

Denial of Access Complaint:

On May 18, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to provide CAD Report 16-19263 or the associated summons, thirty-nine (39) summonses associated with CAD Report 16-19099, and five (5) case reports. The Complainant contended that this disclosure failure was the result of an insufficient search.

¹ No legal representation listed on record.

² Represented by Joseph M. Wenzel, Esq., of Friend & Wenzel, LLC. (Clifton, NJ). Previously represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

³ The Custodian retired on January 1, 2023. Deputy Clerk Joanne Van Hook briefly served as “custodian of record” until Mr. Mounir Almaita was hired to serve as the Borough’s Municipal Clerk.

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.

Supplemental Response:

On June 7, 2022, the Custodian again responded in writing disclosing the multiple case reports and CAD report identified in the Denial of Access Complaint.

Statement of Information:

On June 7, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 9, 2022. The Custodian certified that the OPRA request was entered into the Borough of Haledon’s (“Borough”) OPRA processing system on May 10, 2022 and forwarded to the Police Department for a search. The Custodian certified that he responded in writing on May 17, 2022 disclosing multiple records.

The Custodian averred that all records sought were held by the Police Department and required their assistance. The Custodian noted that when entered into the OPRA processing system, it was not clear that the Complainant sought “case reports” in addition to CAD reports. The Custodian thus acknowledged that no case reports were located and disclosed to the Complainant. The Custodian noted that upon receipt of the instant complaint, the OPRA processing system entry was corrected and the Police Department was able to locate all missing case reports and the additional CAD report. The Custodian noted that said missing records were disclosed to the Complainant on the same day as this SOI submission.

The Custodian noted that he also asked the Police Department to verify whether summonses existed, and Nick Freitas undertook this task. The Custodian stated that Mr. Freitas advised in a memorandum that CAD Report No. 16-19099 was disclosed, but no summonses were identified on the report and could not be located based on a date search in the NJ E-Ticket system. The Custodian stated that if he received any additional information on the “39” missing summonses, then a new search can be conducted accordingly.

Additional Submissions:

On June 8, 2022, the Complainant responded stating that he received the SOI and disputed the Custodian’s claims that no summonses for CAD Report No. 16-19099 existed. The Complainant asserted that it “is ludicrous” to believe that a roadside checkpoint could last four (4) hours without a single summons issued. The Complainant noted that he “has since identified” additional summonses and the Custodian’s SOI contained false statements that a sufficient search occurred. The Complainant stated that he now identified forty-nine (49) summonses associated with CAD Report No. 16-19099 issued between 08:08 and 12:27, which he listed by summons number.

Later on June 8, 2022, the Custodian forwarded the Complainant’s SOI response to Mr. Freitas and asked him to locate and upload the summonses for disclosure along with a letter indicating why same were not previously located. On the same day, Mr. Freitas e-mailed the Custodian stating that he located the summonses, uploaded them to the Borough’s OPRA processing system, and included the following statement regarding his search. Mr. Freitas stated that he conducted a search in NJ E-Ticket for summonses between December 8, 2016 and

December 10, 2016, which yielded no results per the attached “Ticket List.” Mr. Freites noted that he also consulted with the traffic sergeant, who was similarly unable to locate any summonses. Mr. Freites stated that upon conducting the search by summons number without dates, he was able to locate each per the second attached “Ticket List.” Mr. Freites averred that there appeared to exist a search glitch within NJ E-Ticket that produces results by number and not date. Mr. Freites again stressed that he could not have located the summonses absent numbers, which CAD Report No. 16-19099 did not include.

On June 10, 2022, the Custodian responded disclosing the missing summonses and Mr. Freites’s letter explaining the difficulty in searching for them.

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. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant’s OPRA request existed. The custodian certified that after receipt of the complainant’s denial of access complaint, which contained e-mails responsive to the complainant’s request, the custodian conducted a second 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. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Moreover, in Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013), the custodian initially responded to the complainant’s request, producing four (4) responsive records and stating that no other records existed. However, after receiving the denial of access complaint, the custodian performed another search and discovered several other records. Id. In accordance with Schneble, the Council held that the custodian failed to perform an adequate initial search and unlawfully denied access to those additional records. Id.

Here, the Custodian received the subject OPRA request and responded disclosing multiple records. This complaint ensued and the Custodian certified in the SOI that the OPRA request was entered into the Borough’s OPRA processing system and forwarded to the Police Department. The Custodian further certified that his failure to disclose responsive case reports resulted from a vague description of the records sought entered into the system. Further, the Custodian deferred to Mr. Freites’s memo regarding his difficulties trying to locate the alleged thirty-nine (“39”) missing summonses associated with CAD Report No. 16-19099. The Custodian averred that if the Complainant provided additional information, the Police Department would perform another search to locate responsive records. In response to the SOI, the Complainant alleged that the Custodian submitted false statements on their search. The Complainant then argued that forty-nine (49), and not thirty-nine (39), individuals summonses associated with CAD Report No. 16-19099 existed: he identified each by number. Within days of this e-mail, on June 10, 2022, the Custodian was able to

disclose each of the outstanding summonses and a more detailed description of the search issues Mr. Freites encountered.

A custodian has a legal obligation to search for and disclose all records that exist unless otherwise exempt. Turning to the alleged missing case reports and CAD report, the Custodian caused the Police Department to locate records and subsequently disclosed them to the Complainant. However, it was not until after the filing of this complaint that the Custodian, through the Police Department, was able to locate and disclose five (5) case reports and an additional CAD report. The Custodian's SOI statement that the Police Department's failure to locate the case reports was due to a lack of clarification in the OPRA processing system entry: some of the case report numbers input were identified as CAD report numbers. However, this entry error does not absolve the Custodian from his legal obligation to search for and disclose the records sought. Thus, the facts here are similar to those in Weiner, GRC 2013-52 and it follows that an insufficient search occurred in the instant complaint as it relates to the missing case reports and CAD report.

As for the missing summonses associated with CAD Report No. 16-19099, the GRC is persuaded that an insufficient search did not occur. In reaching this conclusion, the GRC gives significant weight to Mr. Freites's description of the difficulties in locating the records. That is, the CAD report did not identify any summonses numbers and the NJ E-Ticket system did not identify the responsive summonses based on a search by date. It was not until the Complainant listed each summons number that Mr. Freites was able to locate each in the NJ E-Ticket system and prepare it for eventual disclosure on June 10, 2022. For these reasons, the GRC distinguishes these facts from Weiner, GRC 2013-52 because the evidence of record does not bear that a more sufficient search absent summons numbers could be executed.

Potentially contrary to the foregoing was the Complainant's ability to identify each summons by number in his June 8, 2022 e-mail. See *e.g.* Anonymous v. Borough of Haledon (Passaic), GRC Complaint No. 2020-119 (August 2021) (holding that the custodian's search was insufficient because even the complainant was able to identify summonses by number). However, even the Complainant errantly argued in the Denial of Access Complaint that the Borough failed to produce thirty-nine (39) summonses only to later argue that forty-nine (49) summonses attached to CAD Report No. 16-19099 existed. Thus, it cannot be said that Mr. Freites committed an insufficient search, especially where the Complainant knew at least some of the summonses numbers and did not include them in his original OPRA request.

Accordingly, the Custodian's failure to locate and disclose multiple case reports and a CAD report responsive to the Complainant's OPRA request until after a more reasonable search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian unlawfully denied access to that spreadsheet. N.J.S.A. 47:1A-6; Weiner, GRC 2013-52. However, the GRC need not order disclosure of the missing case reports because same was disclosed on June 7, 2022.

Additionally, the Custodian's failure to locate summonses responsive to CAD Report No. 16-19099 through Mr. Freites was not the result of an insufficient search. Instead, Mr. Freites was hindered by a search function issue with NJ E-Tickets and he could not have reasonably identified

the responsive summonses without some identification of the actual summons numbers. Thus, this portion of the complaint differs from Weiner, GRC 2013-52 and no insufficient search occurred.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to locate and disclose multiple case reports and a CAD report responsive to the Complainant's OPRA request until after a more reasonable search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian unlawfully denied access to that spreadsheet. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). However, the GRC need not order disclosure of the missing case reports because same was disclosed on June 7, 2022.
2. The Custodian's failure to locate summonses responsive to CAD Report No. 16-19099 through Mr. Freites was not the result of an insufficient search. Instead, Mr. Freites was hindered by a search function issue with NJ E-Tickets and he could not have reasonably identified the responsive summonses without some identification of the actual summons numbers. Thus, this portion of the complaint differs from Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) and no insufficient search occurred.

Prepared By: Frank F. Caruso
Executive Director

July 18, 2023