



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

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

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

November 7, 2024 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2022-269

v.

Berkeley Township (Ocean)
Custodian of Record

At the November 7, 2024, public meeting, the Government Records Council (“Council”) considered the October 29, 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. Because the within Denial of Access Complaint has articulated a cause of action under OPRA and contains a reasonable factual basis to pursue, the complaint is not frivolous and the Custodian’s argument that the complaint is frivolous under N.J.S.A. 47:1A-7(b) is rejected. But see Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20, *et al.* (September 2007).
2. The Custodian did not violate OPRA when assessing a \$0.05 fee for one (1) letter size copy because a paper copy was required to make redactions. See N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Further, the Custodian is not required to disclose the responsive record until the Complainant remits the fee and no unlawful denial of access occurred. See N.J.S.A. 47:1A-6; Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004) and Cuba v. N. State Prison, GRC Complaint No. 2004-146 (February 2005).

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 7th Day of November 2024

John A. Alexy, 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: November 12, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 7, 2024 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2022-269

v.

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

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

1. “[A]ll travel/ gas/ mileage reimbursement requests submitted by Geri Ambrosio during the time period January 01, 2020 – April 08, 2022.
2. [A]ll payments made to Geri Ambrosio for all travel/ gas/ mileage reimbursement during the time period January 01, 2020 – April 08, 2022.

[P]lease include copies of all receipts, mileage logs to document payment.”

Custodian of Record: Karen Stallings
Request Received by Custodian: April 08, 2022
Response Made by Custodian: April 19, 2022
GRC Complaint Received: June 15, 2022

Background³

Request and Response:

On April 08, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 19, 2022, the Custodian responded in writing to the Complainant’s request informing him that there are four (4) letter size pages of records responsive to the request. The Custodian stated that one (1) page must be reduced to paper for redactions pursuant to Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order May 24, 2011). The Custodian further informed the Complainant that the cost is \$0.05 per letter size page pursuant to OPRA, and once payment of the one (1) page fee of \$0.05 is received, she would disclose the record.

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.

Denial of Access Complaint:

On June 15, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that, on April 19, 2022, the Custodian responded to his April 8, 2022 OPRA request informing him that there are four (4) letter size pages of records responsive to the request and that one (1) page must be reduced to paper for redactions. The Complainant stated that the Custodian informed him he owes \$0.05 for the one (1) page.

The Complainant stated that, on June 9, 2022, he sent Lauren Staiger⁴ an e-mail informing her that although the Custodian claimed she cannot electronically redact the document, he was submitting proof of Berkeley Township’s (“Township”) Adobe software purchases and license. The Complainant further stated that he confirmed with Adobe that the products purchased by the Township are used to redact documents. The Complainant attached to the complaint a copy of a Township “Vendor Activity Report” dated January 1, 2019 to May 27, 2022, displaying orders of various computer hardware and software.

Statement of Information:

On July 1, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 08, 2022, and responded on April 19, 2022.

The Custodian certified that the Township has five (5) user licenses for Adobe .pdf editing software; however, she is not one of the employees having access to such software. The Custodian further certified that, because she does not have access to the .pdf editing software, she cannot make electronic redactions. The Custodian also certified that she does not have access to software that can re-insert a page back into a .pdf document. The Custodian certified that, because she lacks access to .pdf editing software, she must make a copy then redact the exempt content prior to disclosing electronically.

The Custodian certified that she located four (4) pages of records responsive to the request, of which one (1) letter size page must be reduced to paper for redactions pursuant to Paff, GRC 2010-09. The Custodian further certified that she informed the Complainant that the copying cost pursuant to OPRA is \$0.05 per page; therefore, he owed \$0.05 for copying one (1) page. The Custodian certified that she also informed the Complainant that once payment was received, she would disclose the requested records. The Custodian certified that the Township is presently awaiting payment.

The Custodian certified that the Complainant has filed numerous complaints against the Township disputing copying charges for redaction purposes, citing GRC Complaint Nos. 2018-18, 2020-116, 2022-114, 2022-115, and 2022-149. The Custodian asserted that the Complainant commenced said complaints in “bad faith” solely for the purpose of harassing the Township. The Custodian argued that the GRC should therefore dismiss this complaint as frivolous pursuant to

⁴ Although the Complainant did not further identify Ms. Staiger or her interest in this complaint, the GRC notes that she is a partner in the law firm of Dasti & Staiger located in Forked River, N.J.

N.J.S.A. 47:1A-7(e). In support of her argument, the Custodian cited Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20, *et al.* (September 2007).

Analysis

Frivolous Complaint Allegation

As a threshold issue, in the SOI the Custodian argued the within complaint is frivolous under N.J.S.A. 47:1A-7(e), and therefore should be dismissed by the Council. The Council is loath to find a complaint frivolous if a cause of action, however minor, is marshalled in the facts set forth in the complaint. However, the Council will find a complaint to be frivolous if the evidence of record supports such a finding. In Caggiano, GRC 2007-20, *et al.*, the Council found numerous grounds, which in the aggregate, supported the conclusion that the complaints were filed in bad faith, solely for the purpose of harassment; to wit:

- (a) the Complainant filed four (4) separate OPRA requests for identical records within a few days of each other;
- (b) in each OPRA request, the Complainant failed to wait until the expiration of the statutorily-mandated seven (7) business day response period at N.J.S.A. 47:1A-5(i) before he filed another OPRA request for identical records;
- (c) the Custodian offered the requested records to the Complainant on July 25, 2006 and September 12, 2006 when the contracts were received by the Borough, but the Complainant refused to accept the records and denied that they were contracts;
- (d) in spite of the disclosure of the requested records (whether or not the Complainant agreed with the content of those records), the Complainant filed the instant Denial of Access Complaints with the GRC;
- (e) the Complainant failed to inform the GRC in any of his filings that the Custodian had made available to him the requested records prior to the filing of the Complainant's Denial of Access Complaints;
- (f) in his May 21, 2007 letter to the Custodian, the Complainant threatens to file "five separate complaints for each contract not being immediately available[.]" which is *prima facie* evidence of the Complainant's ongoing bad faith and intention to harass the Custodian and the Borough of Stanhope in these consolidated complaints; and
- (g) the extremely high number and frequency of OPRA requests filed by the Complainant with the Borough of Stanhope in 2006 and 2007.

[Id.]

In Caggiano, the complainant filed continuous, repetitive OPRA requests, refused to accept disclosed records, denied disclosed records were responsive to the requests, denied requested records were disclosed, and threatened to file several separate complaints for certain requested records not being immediately available, which the Council found was *prima facie* evidence of the complainant's ongoing bad faith and intention to harass the Borough. Here, the GRC finds that the

Complainant's filing does not present a series of allegations with the sole intended purpose of harassing the Township. On the contrary, the Complainant did articulate a cause of action under OPRA in the complaint.

Therefore, because the within Denial of Access Complaint has articulated a cause of action under OPRA and contains a reasonable factual basis to pursue, the complaint is not frivolous and the Custodian's argument that the complaint is frivolous under N.J.S.A. 47:1A-7(b) is rejected. But see Caggiano, GRC 2007-20, *et al.*

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.

OPRA further provides that:

A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be: \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger.

[N.J.S.A. 47:1A-5(b).]

In Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011), in which the complainant asserted that it was unnecessary for the custodian to make and charge for copies of records to be disclosed electronically, the Council held:

[B]ecause the Custodian had to make paper copies of the requested records in order to redact the requested minutes prior to providing same electronically, the Custodian's charge . . . for the cost of copying the records to perform redactions prior to providing the records to the Complainant electronically is warranted pursuant to N.J.S.A. 47:1A-5(b).

[Id.]

Here, the Custodian informed the Complainant that out of four (4) pages of records responsive to the request, one (1) page would have to be reduced to paper to make redactions, which accords with Paff, GRC 2010-09. Although there is nothing in the evidence of record indicating the Complainant objected to the proposed redactions, he did object to the assessment of the \$0.05 fee for the one (1) letter size copy because he alleged that he had proof the Township purchased Adobe editing software. Further, the Complainant stated that he confirmed with Adobe that the products purchased by the Township from January 1, 2019 to May 27, 2022, are used to

redact documents. However, a purchase by the Township of Adobe .pdf editing software, does not prove that the Custodian had access to such software. Indeed, the Custodian certified that she does not have access to .pdf editing software and must make a copy, then redact the exempt content, prior to disclosing it electronically.

It is clear the Complainant made an assumption about the type of software available to the Custodian that was subsequently contradicted by the evidence of record. Further, it is undisputed that the Complainant failed to pay the assessed \$0.05 copying fee.

The Council has long held that a custodian is not required to disclose requested records until receiving payment for any incurred copying fees. In Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004), the Council held that as “the Custodian did not receive payment for the actual duplication cost of the requested records, [he] was not required under OPRA to release said copies.” Id. Subsequently, in Cuba v. N. State Prison, GRC Complaint No. 2004-146 (February 2005), the Council held that “the Custodian was proper in withholding the release of the requested record until receiving payment for the copying fee from the Complainant.” Id.

Accordingly, the Custodian did not violate OPRA when assessing a \$0.05 fee for one (1) letter size copy because a paper copy was required to make redactions. See N.J.S.A. 47:1A-5(b); Paff, GRC 2010-09. Further, the Custodian is not required to disclose the responsive record until the Complainant remits the fee and no unlawful denial of access occurred. See N.J.S.A. 47:1A-6; Santos, GRC 2004-74 and Cuba, GRC 2004-146.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the within Denial of Access Complaint has articulated a cause of action under OPRA and contains a reasonable factual basis to pursue, the complaint is not frivolous and the Custodian’s argument that the complaint is frivolous under N.J.S.A. 47:1A-7(b) is rejected. But see Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20, *et al.* (September 2007).
2. The Custodian did not violate OPRA when assessing a \$0.05 fee for one (1) letter size copy because a paper copy was required to make redactions. See N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Further, the Custodian is not required to disclose the responsive record until the Complainant remits the fee and no unlawful denial of access occurred. See N.J.S.A. 47:1A-6; Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004) and Cuba v. N. State Prison, GRC Complaint No. 2004-146 (February 2005).

Prepared By: John E. Stewart

October 29, 2024