



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

February 29, 2024 Government Records Council Meeting

David Weiner
Complainant

Complaint No. 2022-455

v.

County of Essex
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 the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 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 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**

**David Weiner¹
Complainant**

GRC Complaint No. 2022-455

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. “[D]ocuments delineating” the curriculum vitae for County of Essex (“County”) Executive Chief of Staff Philip B. Alagia, including his college degree.
2. “[D]ocuments delineating” the curriculum vitae for County Executive Deputy Chief of Staff M. Teresa Ruiz, including her college degree.³

Custodian of Record: Olivia Schumann, Esq.

Request Received by Custodian: August 2, 2022

Response Made by Custodian: August 22, 2022

GRC Complaint Received: August 25, 2022

Background⁴

Request and Response:

On July 27, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 22, 2022,⁵ the Custodian responded stating that no records responsive to the subject OPRA request items exist.

Denial of Access Complaint:

On August 25, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s response that

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Complainant sought additional records that are not at issue in this complaint.

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 GRC notes that said response was beyond the seven (7) business days and results in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC will not address this issue because the Complainant does not raise it in the Denial of Access Complaint.

no records existed but did not provide any additional arguments or documentation supporting his claim.

Statement of Information⁶:

On November 9, 2022, the Custodian filed a Statement of Information (“SOI”) attaching a certification from Public Information Director Anthony Puglisi. The Custodian certified that she received the Complainant’s OPRA request on August 2, 2022. The Custodian certified that her search included utilizing Mr. Puglisi. The Custodian certified that Mr. Puglisi advised her on August 11, 2022 that no records existed. Puglisi Cert. ¶ 4. The Custodian certified that she subsequently responded to the Complainant in writing on August 22, 2022 advising the Complainant that no responsive records existed. The Custodian further affirmed that prior to the filing of the SOI, she again contacted Mr. Puglisi on November 3, 2022, who confirmed for a second time that no records existed. Puglisi Cert. ¶ 5-6.

The Custodian argued that the Council has consistently held that no unlawful denial of access could have occurred where a custodian certifies that all responsive records that existed were provided to a complainant. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Owens v. Mt. Holly Twp. (Burlington), GRC Complaint No. 2013-233 (February 2014). The Custodian argued that the County clearly disclosed the only records within its possession responsive to the Complainant’s OPRA request items not at issue here and that no additional records exist. The Custodian thus requested that the Council find that no unlawful denial of access occurred here.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant’s OPRA request sought “documents delineating” curriculum vitae for two (2) individuals. The Custodian responded stating that no records existed. Following the filing of this complaint, the Custodian certified in the SOI that the County disclosed all records that existed to the Complainant and that Mr. Puglisi has certified that no additional records exist.

Upon review, the GRC is persuaded that no unlawful denial of access has occurred, although not specifically for the reason advanced by the Custodian in the SOI. There, the Custodian

⁶ On September 27, 2022, this complaint was referred to mediation. On October 17, 2022, this complaint was referred back to the GRC for adjudication.

addressed the OPRA request in its totality, as opposed to only addressing those items the Complainant contested in the Denial of Access Complaint. Considering the entire OPRA request including the items not at issue here, the Custodian argued that all records were provided, and no others exist. However, when viewing this complaint within the limited perimeter of the contested items, Pusterhofer is a more appropriate precedent. Specifically, the evidence of record supports the Custodian's position that no responsive records exist. That is, the Custodian and Mr. Puglisi have certified that no records exist. Further, the Complainant has not provided any competent, credible evidence necessary to refute the multiple certifications presented by the Custodian in the SOI. Based on the forgoing, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Executive Director

February 20, 2024