



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. 2022-530

v.

Township of Lacey (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 because the Complainant’s Denial of Access Complaint lacked any factual or legal basis supporting a denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014) and Georges v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2021-268 (February 2023). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

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. 2022-530

v.

**Township of Lacey (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of “email logs for the municipality’s police chief from July 01, 2022 to September 19, 2022. Please include sender, recipient, date and subject. This includes ALL accounts used by your police chief.”

Custodian of Record: Veronica Laureigh

Request Received by Custodian: September 19, 2022

Response Made by Custodian: September 27, 2022

GRC Complaint Received: September 29, 2022

Background³

Request and Response:

On September 19, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 27, 2022, the Custodian responded in writing to the Complainant’s request informing him that “[d]ue to the extensive amount of time and research required to fulfill this OPRA request please see the attached Notice of Special Service Charge.” The attached special service charge notice informed the Complainant that numerous records would have to be reviewed and redacted by an employee approved to conduct the work at an hourly rate of \$29.79. The Complainant was informed that an estimated fourteen (14) hours would be required; therefore, the total estimated special service charge was \$417.06, and work would commence once the Complainant approved the charge and remitted 50% of the total amount.

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 September 29, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on September 27, 2022, the Custodian responded to his September 19, 2022 OPRA request informing him that the “request is subject to a \$417.06 special service charge due to extensive amount of time and research.”

Supplemental Submission:

On October 20, 2022, the GRC e-mailed the Complainant advising that although he indicated in the complaint that he was represented by legal counsel, there was no letter of representation or legal argument in the record supporting an unlawful denial of access. The GRC thus informed the Complainant that it would therefore communicate exclusively with him. The Complainant did not reply to the GRC’s e-mail.

Statement of Information:

On October 26, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on September 19, 2022, logged in the request, and forwarded it to Sergeant George Resetar in the Police Department to prepare the request for production. The Custodian certified that she responded to the request on September 27, 2022, advising the Complainant to see an attached notice concerning imposition of a special service charge. The Custodian attached to the SOI her September 27, 2022 response and a “Notice of Special Service Charge” that accompanied the response.

Sergeant George Resetar certified that, on September 19, 2022, the Complainant submitted a request for email logs for the Chief of Police, and he assigned the request a due date of September 27, 2022. Sergeant Resetar certified that N.J.S.A. 47:1A-5(c) permits the imposition of a special service charge when an extraordinary expenditure of time and effort is required to accommodate the request. Sergeant Resetar further certified that there are fourteen factors⁴ that the GRC considers when determining whether a special service charge is warranted and reasonable, which with his responses, are as follows:

Questions/Prompts	Response
What records are requested?	“An email log for all of Chief DiBella’s emails for all accounts used by the Police Chief.”
Give a general nature description and number of the government records requested.	“Email correspondence. Approximately 5,000 emails from July 1, 2022 until September 19, 2022.”
What is the period of time over which the records extend?	“Approximately three months.”
What is the size of the agency?	“Approximately 60.”

⁴ Sergeant Resetar included responses to only thirteen (13) prompts of the GRC’s “14-Point Analysis.” The question “[w]hat is the availability of information technology and copying capabilities?” was skipped.

What is the number of employees available to accommodate the records request?	“Only the Chief and his Administrative Assistant, Lynn Talarico, who is also the Departments (sic) Discovery Clerk have the authority to review the Chief’s emails.”
To what extent do the requested records have to be redacted?	“There will be significant redactions. Unlike most department employees the Chief receives and sends voluminous confidential intel through his emails. His emails, specifically subject headings contain information regarding confidential informants, status updates on criminal investigations, status updates on personnel matter, (sic) status updates on internal affairs investigations, as well as lawsuits. Each of the emails will have to be reviewed by Ms. Talarico, and cross referenced to ensure when individuals are identified, or matters are identified the same does not need to be redacted.”
What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?	“Lynn Talarico, Discovery Clerk and Administrative Assistant to the Chief, hourly rate minus fringe benefits is \$29.79. The entire request will take Ms. Talarico approximately 14 Hours (sic) to complete. This request will also require the input and collaboration from the Chief of Police, Detective Sergeant Samuel Della Sala, head of internal affairs [,] Sgt. George Resetar, Custodian, Patrol Services and Administration, Assistant Deputy Emergency Management Coordinator for Lacey Township Police Department[.] However, for purposes of processing this request, we did not include, or consider, their hourly rate, or time into calculating the total special service charge. The special service charge is a direct reflection of the time Ms. Talarico will spend on the task.”
What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?	“Same as above.”
What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records to their original storage place?	“Same as above”
What is the reason that the agency employed, or intends to employ, the	“Ms. Talarico is the lowest paid employee who is authorized to complete the request. The only

particular level of personnel to accommodate the records request?	other employee in the Lacey Township Police Department who is authorized to review and catalogue the Chief's emails is the Chief himself. However, to ensure a reasonable charge is imposed, the Department calculated the total cost of production by using the lower paid employee capable of producing the records."
Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?	"Lynn Talarico, Administrative Assistant to the Chief and Discovery Clerk. Hourly rate: \$29.79 after subtracting fringe benefits."
Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	"i. 14 hours. ii. Less than one hour to identify all emails. iii. 10-13 hours to cross reference all subject headings with active investigations, personnel matters, internal affairs matters, internal policy matters, matters involving active lawsuits, matters involving pending litigation, and matters involving confidential informants. iv. Less than 1-3 hours to perform the required redactions and prepare a Vaughn Index regarding the same. v. Less than 1 hour to produce the requested records. vi. Total amount of time we believe this request will take to complete is 14 hours."

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.

In Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014), the complainant's denial of access complaint lacked any supporting arguments or legal precedent. The Council found the custodian did not unlawfully deny access to the OPRA request in part because of the complainant's failure to advance any argument in support of his claim. More recently, in Georges v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2021-268 (February 2023), the complainant filed his complaint attaching the custodian's response to his OPRA request. Similarly, the complainant did not include any arguments that could reasonably be considered a claim. The Council found that the complaint lacked any factual or legal basis alleging an unlawful denial of access and dismissed it.

Here, as in Loigman, GRC 2013-342, the Complainant failed to advance any argument in

support of his claim that there was an unlawful denial of access to records. In a fact pattern very similar to Georges, GRC 2021-268, the Complainant in the Records Denied List merely reiterated the Custodian's response by stating that on September 27, 2022, the Custodian responded that the request is subject to a \$417.06 special service charge due to an extensive amount of time and research. The Complainant did not challenge the Custodian's justification for assessing the special service charge or otherwise assert that the special service charge was excessive or unreasonable. As such, because the Complainant failed to assert any factual or legal basis supporting a denial of access to government records, he failed to state a claim on which the GRC could grant relief.

Accordingly, because the Complainant's Denial of Access Complaint lacked any factual or legal basis supporting a denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman, GRC 2013-342 and Georges, GRC 2021-268. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's Denial of Access Complaint lacked any factual or legal basis supporting a denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014) and Georges v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2021-268 (February 2023). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

October 29, 2024