



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

April 30, 2024 Government Records Council Meeting

Maurice Bronson
Complainant

Complaint No. 2022-556

v.

Township of Irvington (Essex)
Custodian of Record

At the April 30, 2024 public meeting, the Government Records Council (“Council”) considered the April 23, 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. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Welenc v. N.J. State Police, GRC Complaint No. 2017-134 (Interim Order dated February 26, 2019). Specifically, the evidence of record supports that the paystub sought by the Complainant exists and should have been disclosed. Thus, the current Custodian shall disclose to the Complainant the most recent paystub preceding submission of the subject OPRA request, with any applicable redactions for deduction and personal information. See O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); Whiteside v. Twp. of Little Falls (Passaic), GRC Complaint No. 2021-89 (Interim Order dated February 28, 2023).
2. **The current Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 30th Day of April 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: May 2, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 30, 2024 Council Meeting**

**Maurice Bronson¹
Complainant**

GRC Complaint No. 2022-556

v.

**Township of Irvington (Essex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the Custodian’s “last paystub.”

Custodian of Record: Harold Wiener³
Request Received by Custodian: October 11, 2022
Response Made by Custodian: October 11, 2022
GRC Complaint Received: October 13, 2022

Background⁴

Request and Response:

On October 11, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, a Clerk’s Office employee responded in writing on behalf of the Custodian stating that the response time frame was being extended through October 31, 2022. On October 12, 2022, sub-custodian Shante Barr responded in writing on behalf of the Custodian stating that no responsive records existed.

Denial of Access Complaint:

On October 13, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Township of Irvington’s (“Township”) response that no records existed. The Complainant contended that the record sought was disclosable as part of the Custodian’s “payroll record” N.J.S.A. 47:1A-10. The Complainant further argued that the Township was required to retain personnel records for six (6) years per Schedule 0313-0004 of the New Jersey Records Retention and Disposition Schedule.

¹ No legal representation listed on record.

² Represented by Samantha Mendenhall, Esq. (Irvington, NJ).

³ The Custodian retired in July 2023. The current Custodian of Record is Shawna Supel.

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.

Statement of Information:

On December 5, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 11, 2022. The Custodian certified that a Clerk’s Office employee responded in writing on the same day extending the response time frame through October 31, 2022. The Custodian affirmed that Ms. Barr responded in writing on his behalf on October 12, 2022 stating that no responsive records existed.

The Custodian argued that no unlawful denial of access occurred. N.J.S.A. 47:1A-5(c); N.J.S.A. 47:1A-5(g); Vessio v. N.J. Dep’t of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007); Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2008-13 (June 2009); Karakashian v. N.J. Dep’t of Law & Pub. Safety, Div. of Consumer Affairs, Office of Medical Examiners, GRC Complaint No. 2013-121, *et seq.* (November 2013). The Custodian argued that there was no bad faith or unlawfulness in the Township’s actions.

Additional Submissions:

On December 5, 2022, the Complainant submitted a sur-reply to the SOI. Therein, the Complainant contended that it was impossible that the Township did not maintain employee payroll records. The Complainant thus argued that the Township unlawfully denied access to his OPRA request.

On March 28, 2024, the GRC sent a request for additional information to the current Custodian. Therein, the GRC questioned the non-existence of the requested paystub given that such a record is traditionally considered a “payroll record” and has been produced in the past. See e.g. O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009). The GRC thus sought a certified response to the following:

1. Does the Township maintain employee paystubs either electronically or in physical form?
2. If yes, does the Township maintain the Custodian’s paystub from the pay period immediately preceding the October 11, 2022 OPRA request. If no, please provide a detailed explanation of the search conducted to locate same.

The GRC requested that current Custodian’s response be submitted no later than April 3, 2024.

On April 10, 2024, the current Custodian responded to the GRC’s request for additional information. Therein, the current Custodian affirmed that she assumed the Municipal Clerk position on July 10, 2023. The current Custodian certified that Business Administrator Musa A. Malik advised on April 9, 2024, that the Township maintains paystubs and retains same for the Custodian for the pay period immediately preceding the subject OPRA request.

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. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). However, should competent, credible evidence to refute a legal certification exist, the Council held that a custodian violated OPRA. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). In Welenc v. N.J. State Police, GRC Complaint No. 2017-134 (Interim Order dated February 26, 2019), the Council looked to foregoing in determining that an unlawful denial of access may have occurred therein. The Council reasoned that although the Custodian certified that the New Jersey State Police (“NJSP”) did not maintain pension information on five (5) officers, he disclosed pension information for one of them. The Council was also persuaded by this disclosure to order the custodian to perform additional searches to ensure that the NJSP did not maintain any of the information sought.

In the matter before the Council, the Township had responded that no records existed. The Custodian subsequently certified in the SOI that no responsive records existed but did not include details of the search conducted to reach this conclusion. While such a response typically results in a finding similar to Pusterhofer, GRC 2005-49, the GRC’s past experience with complaints related to paystubs raised questions on the veracity of the Township’s position. Based on this, the GRC sought additional information from the current Custodian to cure the discrepancy. In response, the current Custodian certified that the Township did maintain pay stubs and, more specifically, the pay stub that is responsive to the subject OPRA request. Thus, and unlike Pusterhofer, the evidence of record supports that the responsive record exists and should have been disclosed, with redactions for exempt information, such as itemized deductions and personal information where applicable. O’Shea, GRC 2008-283; Whiteside v. Twp. of Little Falls (Passaic), GRC Complaint No. 2021-89 (Interim Order dated February 28, 2023). Thus, an unlawful denial of access has occurred.

Therefore, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Welenc, GRC 2017-134. Specifically, the evidence of record supports that the paystub sought by the Complainant exists and should have been disclosed. Thus, the current Custodian shall disclose to the Complainant the most recent paystub preceding submission of the subject OPRA request, with any applicable redactions for deduction and personal information. See O’Shea, GRC 2008-283; Whiteside, GRC 2021-89.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Welenc v. N.J. State Police, GRC Complaint No. 2017-134 (Interim Order dated February 26, 2019). Specifically, the evidence of record supports that the paystub sought by the Complainant exists and should have been disclosed. Thus, the current

Custodian shall disclose to the Complainant the most recent paystub preceding submission of the subject OPRA request, with any applicable redactions for deduction and personal information. See O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); Whiteside v. Twp. of Little Falls (Passaic), GRC Complaint No. 2021-89 (Interim Order dated February 28, 2023).

2. **The current Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

Prepared By: Frank F. Caruso
Executive Director

April 23, 2024