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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

April 29, 2025 Government Records Council Meeting

Elizabeth Mattfield
Complainant

v.

City of Union City (Union)
Custodian of Record

GRC Complaint No. 2023-94

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 2025 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 may have unlawfully denied access to undisclosed contracts responsive to the Complainant’s March 30, 2023 OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Specifically, the evidence of record is inconclusive as to the existence and disclosability of contracts, or contract extensions for 2020, 2021, and 2023. Thus, the Custodian shall search for and disclose to the Complainant any additional outstanding contracts or extensions covering 2020, 2021, or 2023. Should no additional contracts exist, the Custodian must provide a legal certification to the Complainant stating such.
2. **The 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).**
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 2. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to this OPRA request item exists. See N.J.S.A. 47:1A-6; 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 April 2025

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: May 5, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**Elizabeth Mattfield¹
Complainant**

GRC Complaint No. 2023-94

v.

**City of Union City (Union)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. Contracts between the City of Union City (“City”) and N.J. Humane Society (and other previous Animal Control vendors) from 2020 to 2023, including contracts for animal control, sheltering, and “Trap-Beuter-Return” (“TNR”) services.
2. “[W]ritten procedure” from the City’s TNR vendor on how residents can obtain services through that program.³

Custodian of Record: Hilda Rosario

Request Received by Custodian: March 30, 2023

Response Made by Custodian: March 30, 2023

GRC Complaint Received: April 25, 2023

Background⁴

Request and Response:

On March 30, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing disclosing two (2) contracts for the City’s Animal Rescue Shelter and Animal Control Office. The Custodian noted that no written communications from any vendor exist.

On March 31, 2023, the Complainant e-mailed the Custodian stating that the disclosed contract had a 2017 end date and sought clarification on whether same was renewed for the

¹ No legal representation listed on record.

² Represented by Angelo Auteri, Esq., of Scarinci Hollenbeck, LLC (Little Falls, NJ).

³ The Complainant included in the Denial of Access Complaint an additional disputed record that was actually sought as part as ongoing correspondence related to a separate January 5, 2023 OPRA request. Thus, the GRC does not list this item because it was not part of the OPRA request the Complainant identified as at issue here.

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.

requested years. The Complainant further noted that if no current contract exists the Custodian may state this fact and close the subject OPRA request. On the same day, the Custodian acknowledged receipt of the Complainant's e-mail and stated that she would address her question the following week. On April 17, 2023, the Complainant e-mailed the Custodian asking whether any new or renewed contracts were located. On the same day, the Custodian responded that she had not located any such records but would have a staff member look again. The Custodian noted that because her office was short-staffed, she would need until the end of the week.

Denial of Access Complaint:

On April 25, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that she submitted the subject OPRA request after a previous OPRA request went unfulfilled. The Complainant noted that while the Custodian has been polite and responsive, she has given the City many extensions without success. The Complainant argued that the records sought are "required by law and established by [City] ordinances."

Statement of Information:

On May 18, 2023, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on March 24, 2023.⁵ The Custodian certified that her search included contacting the TNR vendor to obtain responsive records. The Custodian certified that she responded in writing on March 30, 2023, disclosing a March 2018 contract with People for Animals, Inc., and a December 2021 contract with Garden State Animal Rescue Center, Inc. The Custodian certified that the March 2018 contract included four (4) one-year extension options rendering the contract effective through 2021. The Custodian further affirmed that she advised the Complainant that no written communications regarding TNR procedures existed. The Custodian noted that she could not locate the most recent contract but sought additional time in subsequent correspondence to locate same. The Custodian stated that the Complainant filed this Denial of Access Complaint before she could follow up.

The Custodian contended that her handling of the subject OPRA request was lawful. The Custodian argued that OPRA allows custodians to extend the response time frame to fulfill an OPRA request. N.J.S.A. 47:1A-5(i). The Custodian also argued that the City did not maintain any "[w]ritten procedures" for TNR services responsive to OPRA request item No. 2. The Custodian asserted that while the request item itself was invalid because it sought information, no unlawful denial of access can occur where no records exist. The Custodian finally noted that throughout the pendency of the subject OPRA request, she engaged the Complainant in writing and was ultimately unable to fulfill the OPRA request prior to the filing of this complaint.

⁵ This date likely refers to a March 24, 2023 communication from the Complainant in relation to the January 5, 2023 OPRA request. Therein, the Complainant asked for budgets, invoices, purchase orders for the TNR program over the same time period identified in 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.

OPRA request No. 1

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. Id. The Council held that the custodian’s certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian’s burden of proof. Id.; see also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015). However, in Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019), the Council held that evidence contained in the record suggested that additional responsive records may exist. Based on this, the Council ordered the custodian to perform another search and submit a certification regarding the results of that search.

In the instant matter, the Complainant’s OPRA request No. 1 sought contracts between the City and vendors to perform animal control, sheltering, and/or TNR services from 2020 through 2023. On March 30, 2023, the Custodian responded in writing providing two (2) contracts: a March 2018 contract with People for Animals, Inc., and a December 2021 contract with Garden State Animal Rescue Center, Inc. In subsequent communications, the Complainant sought, and the Custodian agreed to look for, additional contracts responsive to OPRA request item No. 1. However, the Custodian did not follow up after April 17, 2023. This complaint followed, wherein the Complainant contended that she only received one (1) contract from 2017 and none for the requested time frame. In the SOI, the Custodian certified that she sent the Complainant two (2) contracts: the March 2018 contract that allegedly contained four (4) one-year extensions, and the December 2021 contract that was active through November 2022. The Custodian attached those contracts to the SOI. The Custodian also acknowledged she later advised the Complainant she was looking for the most recent contract.

Upon review, the GRC is compelled to find the facts here more consistent with Macek than Danis. First, the GRC notes that there is inconsistency between the records disclosed and the Complainant’s assertion that she only received one (1) contract ending in 2017. Instead, the record supports that the Custodian disclosed to the Complainant the March 2018 and November 2021 contracts.⁶ However, while extensions of March 2018 contract might have covered 2020 and 2021, the GRC found no evidence that the March 2018 contract contained either a clear term period or

⁶ It is possible this discrepancy occurred because the Complainant and Custodian were simultaneously communicating about at least two (2) pending OPRA requests for various records associated with the City’s animal services.

any extension provision. The Custodian also did not disclose any records memorializing these extensions through continuing resolutions or other types of documents. Further, while the November 2021 contract (covering 2022) does include this extension language, the Custodian did not disclose any records showing that the contract was extended through 2023. The Custodian also advised the Complainant on April 17, 2023, that she was still looking for the “most recent” contract but did not follow up with the Complainant. Based on the foregoing, the evidence of record does not support that all records were provided.

Accordingly, the Custodian may have unlawfully denied access to undisclosed contracts responsive to the Complainant’s March 30, 2023 OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek, GRC 2017-156, *et seq.* Specifically, the evidence of record is inconclusive as to the existence and disclosability of contracts, or contract extensions for 2020, 2021, and 2023. Thus, the Custodian shall search for and disclose to the Complainant any additional outstanding contracts or extensions covering 2020, 2021, or 2023. Should no additional contracts exist, the Custodian must provide a legal certification to the Complainant stating such.

OPRA request No. 2

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 No. 2 sought written procedures for TNR services. The Custodian responded advising that no records existed. In the Denial of Access Complaint, the Complainant stated that the Custodian did not disclose a record but did not include any arguments disputing the Custodian’s response. In the SOI, the Custodian certified that no records responsive to OPRA request item No. 2 existed. Further, there is no evidence in the record to refute this certification. Thus, 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 item No. 2. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to this OPRA request item exists. See N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian may have unlawfully denied access to undisclosed contracts responsive to the Complainant’s March 30, 2023 OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Specifically, the evidence of record is inconclusive as to the existence and disclosability of contracts, or contract extensions for 2020, 2021, and 2023. Thus, the Custodian shall search for and disclose to the Complainant any additional outstanding contracts or extensions covering 2020, 2021, or 2023. Should no additional contracts exist, the Custodian must provide a legal certification to the Complainant stating such.

2. **The 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).**
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 2. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to this OPRA request item exists. See N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Executive Director

April 15, 2025