



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

February 28, 2007 Government Records Council Meeting

Steven Kossup
Complainant

Complaint No. 2006-174

v.

City of Newark Police Department
Custodian of Record

At the February 28, 2007 public meeting, the Government Records Council ("Council") considered the February 21, 2007 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. Pursuant to the fact that the Newark Police Department employee, Lt. Caroline Clark, did not forward the Complainant's request form or direct the Complainant to the proper records custodian, that employee (Lt. Caroline Clark) has violated N.J.S.A. 47:1A-5.h.
2. Pursuant to the fact that the OPRA Manager certified that neither she nor the Custodian received the Complainant's OPRA request until after the denial of access complaint was filed with the GRC, the Custodian did not unlawfully deny the Complainant's request.

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 28th Day of February, 2007



Vincent Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman & Secretary

Government Records Council

Decision Distribution Date: March 7, 2007

**Findings and Recommendations of the Executive Director
February 28, 2007 Council Meeting**

Steven Kossup¹

GRC Complaint No. 2006-174

Complainant

v.

City of Newark, Police Department²
Custodian of Records

Records Relevant to Complaint:

Incident report CC# 114925-99 for aggravated assault on a police officer dated December 26, 1999.

Request Made: February 6, 2006

Response Made: None

Custodian: Robert Marasco (Municipal Clerk)

GRC Complaint Filed: September 18, 2006

Background

February 2, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the incident report CC# 114925-99 for aggravated assault on a police officer dated December 26, 1999.

September 18, 2006

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachment:

- Complainant's OPRA Request form dated February 6, 2006.

The Complainant asserts submitting the OPRA request form on February 2, 2006 (official form was signed and dated February 6, 2006) to the Newark Police Department for records related to his client, Rui Rodrigues. The Complainant also asserts that he has not received a response thus far.

September 26, 2006

¹ No legal representation listed.

² Represented by General Counsel, Aney K. Chandy, Esq. (Newark, NJ).

Offer of Mediation sent to both parties. Both parties declined mediation.

October 4, 2006

Letter to the GRC from the OPRA Manager of the City of Newark, Joyce Lanier. The OPRA Manager asserts that, in accordance with OPRA, the Municipal Clerk has been designated as the official custodian of records. The OPRA Manager also asserts that the original OPRA request was sent directly to Lt. Caroline Clark of the Newark Police Department. The OPRA Manager states that the actual custodian of records, Robert Marasco (Municipal Clerk), did not receive notification about the OPRA request until after the denial of access complaint was filed with the GRC. The OPRA Manager also states that the Complainant has been made aware of the City of Newark's OPRA procedure both verbally and in writing through previous OPRA requests and GRC Complaint No. 2006-110.

October 10, 2006

E-mail to the OPRA Manager from the GRC. The GRC requests a certification that 1) the Custodian did not receive the Complainant's OPRA request form; 2) who received the Complainant's OPRA request form; and 3) whether the records requested by the Complainant are criminal investigatory records.

November 13, 2006

Letter to the GRC from the Assistant Corporation Counsel, Carolyn McIntosh. The Counsel states that she is the Assistant Corporation Counsel who is assigned to the Legal Affairs Office of the Newark Police Department. The Counsel also states that there are no records responsive to the Complainant's request. In addition, the Counsel states that any incident involving an assault on a police officer would trigger an investigation. Therefore, if there were such a document related to the request, it would be considered a criminal investigatory record and exempt from disclosure under OPRA.

Analysis

Whether the employee who received the records request violated OPRA by not forwarding the request to the Custodian or directing the requestor to the Custodian pursuant to N.J.S.A. 47:1A-5h?

OPRA provides that:

“[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.” N.J.S.A. 47:1A-5.h.

The Complainant asserts submitting the OPRA request form on February 2, 2006 (official form was signed and dated February 6, 2006) to the Newark Police Department for records related to his client, Rui Rodrigues. The Complainant also asserts that he has not received a response thus far.

The OPRA Manager asserts that, in accordance with OPRA, the Municipal Clerk has been designated as the official custodian of records. The OPRA Manager also asserts that the original OPRA request was sent directly to Lt. Caroline Clark of the Newark Police Department. The OPRA Manager states that the actual custodian of records, Robert Marasco (Municipal Clerk), did not receive notification about the OPRA request until after the denial of access complaint was filed with the GRC. The OPRA Manager also states that the Complainant has been made aware of the City of Newark's OPRA procedure both verbally and in writing through previous OPRA requests and GRC Complaint No. 2006-110.

In prior GRC decision, Mourning v. Department of Corrections, GRC Complaint No. 2006-75 (August 2006), the Council found that pursuant to the fact that the employee who received the request did not forward the request to the Custodian or direct the requestor to the Custodian as is required in N.J.S.A. 47:1A-5.h, thereby preventing the Complainant's request from reaching the Custodian, that employee is in violation of N.J.S.A. 47:1A-5.h.

Therefore, pursuant to the fact that the Newark Police Department employee, Lt. Caroline Clark did not forward the Complainant's request form or direct the Complainant to the proper records custodian, that employee (Lt. Caroline Clark) has violated N.J.S.A. 47:1A-5.h.

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant asserts submitting the OPRA request form on February 2, 2006 (official form was signed and dated February 6, 2006) to the Newark Police Department for records related to his client, Rui Rodrigues. The Complainant also asserts that he has not received a response thus far.

The OPRA Manager asserts that in accordance with OPRA, the Municipal Clerk has been designated as the official custodian of records. The OPRA Manager also asserts that the original OPRA request was sent directly to Lt. Caroline Clark of the Newark Police Department. The OPRA Manager states that the actual custodian of records, Robert Marasco (Municipal Clerk), did not receive notification about the OPRA request until after the denial of access complaint was filed with the GRC. The OPRA Manager also states that the Complainant has been made aware of the City of Newark’s OPRA procedure both verbally and in writing through previous OPRA requests and GRC Complaint No. 2006-110.

Also in Mourning v. Department of Corrections, GRC Complaint No. 2006-75 (August 2006), the Council found that pursuant to the fact that the Custodian certified that she did not receive the Complainant’s OPRA request until January 20, 2006 and consequently responded in a timely manner on January 24, 2006, she is not in violation of N.J.S.A. 47:1A-5.i. or N.J.S.A. 47:1A-5.g.

In this case, pursuant to the fact that the OPRA Manager certified that neither she nor the Custodian received the Complainant’s OPRA request until after the denial of access complaint was filed with the GRC, the Custodian did not unlawfully deny the Complainant’s request.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

3. Pursuant to the fact that the Newark Police Department employee, Lt. Caroline Clark, did not forward the Complainant’s request form or direct the Complainant to the proper records custodian, that employee (Lt. Caroline Clark) has violated N.J.S.A. 47:1A-5.h.
4. Pursuant to the fact that the OPRA Manager certified that neither she nor the Custodian received the Complainant’s OPRA request until after the denial of access complaint was filed with the GRC, the Custodian did not unlawfully deny the Complainant’s request.

Prepared By:

Tiffany L. Mayers
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

February 21, 2007