



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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VINCENT P. MALTESE, Chairman
COMMISSIONER SUSAN BASS LEVIN
COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

May 30, 2007 Government Records Council Meeting

Tyrone Jamison
Complainant

Complaint No. 2006-123

v.

Somerset Community Action Program
Custodian of Record

At the May 30, 2007 public meeting, the Government Records Council ("Council") considered the May 23, 2007 *Reconsideration* 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. Complainant's April 10, 2006 request for records was a valid OPRA request because it was submitted on an official OPRA request form from the agency. N.J.S.A. 47:1A-5.i.
2. Because the Custodian granted access to the requested records within seven (7) business days of her receipt of the Complainant's April 10, 2006 OPRA request, the Custodian has not violated N.J.S.A. 47:1A-5.i.
3. Because Complainant's April 14, 2006 e-mail and June 21, 2006 letter requesting additional records were not submitted to SCAP on an official OPRA request form, these submissions are not valid OPRA requests. N.J.S.A. 47:1A-5.f; Advisory Opinion 2006-01; see also New Jersey Builders Ass'n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 181 (App. Div. 2007).

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 May, 2007

Vincent P. Maltese, Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: June 4, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***Reconsideration to Settle the Record*
Findings and Recommendations of the Executive Director
May 30, 2007 Council Meeting**

**Tyrone Jamison¹
Complainant**

GRC Complaint No. 2006-123²

v.

**Somerset County Community Action Program³
Custodian of Records**

Records Relevant to the Complaint:

1. Financial report for 2003;
2. Information concerning the amount of a settlement paid in 2003 by Somerset County Action Program (“SCAP”) to a former Assistant Director;
3. Information concerning how the settlement was paid, *i.e.*, whether it was paid in lump sum or multiple payments;
4. Information as to whether tuition, state or federal grant monies were used to pay the settlement referenced above.

Request Made: April 10, 2006

Response Made: April 14, 2006

Custodian: Jyotsana Dani⁴

GRC Complaint filed: June 20, 2006

Background

April 10, 2006

Complainant’s OPRA request sent to Custodian on an official OPRA request form for the records set forth above.

April 11, 2006

Custodian receives Complainant’s OPRA request.

¹ No representation listed on record.

² This complaint is a reconsideration of Tyrone Jamison v. Somerset County Action Program, GRC Complaint No. 2006-123 (December 2006).

³ Represented by Darryl W. Simpkins, Esq., Simpkins & Simpkins (Hillsborough, NJ).

⁴ The Denial of Access Complaint erroneously listed Isaac Dorsey, Executive Director of SCAP, as Custodian.

April 14, 2006

Complainant's e-mail to Custodian requesting the following additional records:

- 1) Information on the amount of the settlement paid by SCAP to a former SCAP Assistant Director in 2003;
- 2) Information on how the settlement was paid, whether by lump sum payment or multiple payments over time;
- 3) Information if the settlement was paid directly from the state, or was money used from state and federal grants and tuition paid by parents, originally earmarked to fund the programs implemented by SCAP;
- 4) Information on who is responsible for public disclosure of the foregoing information. If the foregoing information was withheld, the name of the person(s) who were responsible for that decision;
- 5) Does the Director have the responsibility to disclose public information? If not, who does?
- 6) End of the year financial statement for 2003.

April 14, 2006

Custodian's response to Complainant's April 10, 2006, OPRA request, three (3) business days after receipt. In response to Complainant's OPRA request, Custodian provides:

- SCAP's 2003-2004 audited financial statement;
- Copies of two settlement checks provided to a former Assistant Director of SCAP;
- A memorandum directing Complainant's attention to page five of the 2003-2004 audited financial statement and explaining the allocation information sought.

May 25, 2006

Letter from Custodian's Counsel noting receipt of the Complainant's OPRA request form and stating that the records were provided to Complainant. The Custodian's counsel states that since the Complainant's April 10, 2006 OPRA request, the Complainant has e-mailed additional requests for records to the Custodian and requested that the Custodian interpret for the Complainant the records provided.

June 20, 2006

Complainant files Denial of Access Complaint with the GRC.

June 21, 2006

Complainant's letter to the GRC, stating that the following requests were included in his April 10, 2006 OPRA request and were not previously addressed:

- Records in the possession of SCAP which will show the source of the \$80,000 settlement paid to a former SCAP Assistant Director;
- Records indicating the role of the records custodian and the duties associated with the position;
- Records indicating the job title and responsibilities of the person(s) in charge of disseminating information to the public.

June 27, 2006

Letter from Custodian's Counsel to GRC stating that Complainant has received all records requested in his April 10, 2006 OPRA request.

June 28, 2006

The GRC offers mediation to the parties.

June 28, 2006

Complainant agrees to mediation. The Custodian does not agree to mediation.

July 12, 2006

Request for the Statement of Information sent to the Custodian.

July 13, 2006

Custodian's Statement of Information ("SOI"), with the following attachments:

- June 27, 2006 letter from Custodian's Counsel to GRC;
- May 25, 2006 letter from Custodian's Counsel to GRC;
- May 10, 2006 letter from Senator Bob Smith to GRC;
- June 22, 2006 letter from Custodian's Counsel to GRC;
- Denial of Access Complaint;
- Memorandum noting allocation of funds paid for \$80,000 settlement;
- Copy of Check No. 1269 dated 5/4/2004 from SCAP to a former SCAP Assistant Director in the amount of \$11,254.07;
- Copy of Check No. 811-7015-27 dated 5/4/2004 from SCAP to a former SCAP Assistant Director in the amount of \$60,000;
- SCAP Financial Statements and Supplementary Information for the years ended August 31, 2004 and August 31, 2003 from Johnson & Associates, P.C., Certified Public Accountants;
- Certification of the Custodian.

The Custodian certifies that on April 11, 2006, SCAP received the Complainant's OPRA request on an official OPRA request form. The Custodian further certifies that the Denial of Access Complaint erroneously states that the OPRA request was made April 21, 2006. The Custodian further certifies that upon receiving the Complainant's OPRA request form, she identified the following documents as relevant to the Complainant's request:

- SCAP's 2003-2004 audited financial statement, which included the settlement involving a former SCAP Assistant Director;
- Copies of the two settlement checks provided to a former SCAP Assistant Director;
- A memorandum addressing Complainant's attention to page five of the 2003-2004 audited financial statement and explaining the allocation information he sought.

The Custodian further certifies that she provided the Complainant with the above documents on April 14, 2006. Additionally, the Custodian certifies that by e-mail dated April 14, 2006, the Complainant reiterated his April 10, 2006 request.

The Custodian also certifies that the Complainant never submitted any other OPRA request form to SCAP requesting additional information. The Custodian further certified that the additional records allegedly requested on April 10, 2006 but not received by the Complainant and described in Complainant's June 21, 2006 correspondence to the GRC was not submitted to SCAP on the required OPRA request form.

July 17, 2006

Complainant files a response to Custodian's SOI asserting that he requests records which will clearly indicate the funding sources for the settlement paid to a former SCAP Assistant Director. Complainant requests that his complaint move on to the investigation stage.

July 18, 2006

Complainant files additional response to Custodian's SOI. Complainant asserts that he is within his rights to request records pertaining to the funding sources of the settlement paid. Complainant asserts that the records he received from the Custodian do not indicate the source of the funds, i.e., how much money from certain government agencies was used to fund the settlement.

August 4, 2006

Complainant's letter to the GRC asserting that the records he received do not indicate the source of the funds used to pay the settlement.

December 14, 2006

At its December 14, 2006 public meeting, the Government Records Council issued an Administrative Disposition of this case on the grounds that the Complainant's OPRA request was invalid because "[t]he Custodian certifies that the Complainant's April 21, 2006 letter was not a valid OPRA request because it was not submitted on an official OPRA request form. The Custodian certifies that the Complainant was provided a request form to file this request, but no form was received from the Complainant."

April 17, 2007

Complainant files a Request for Reconsideration of this complaint with the GRC. The Complainant asserts that the Custodian legally certified that SCAP did receive an official OPRA request form from Complainant. Complainant further asserts that a copy of his request on an OPRA request form was sent to the Complainant by SCAP's counsel.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA states:

[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought... N.J.S.A. 47:1A-5.f.

OPRA also provides that:

“[a] request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian....” N.J.S.A. 47:1A-5.g.

OPRA further provides that:

A custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived....N.J.S.A. 47:1A-5.i.

The parties do not dispute that the Complainant’s April 10, 2006 OPRA request was made on an official OPRA request form. The Custodian certifies that she received Complainant’s April 10, 2006 OPRA request on April 11, 2006, and that she provided all records responsive to the request on April 14, 2006, three (3) business days after receipt.

On April 14, 2006, the same day that the Custodian provided the records responsive, Complainant e-mailed the Custodian and requested additional records as follows:

- 1) Information on the amount of the settlement paid by SCAP to a former Assistant Director of SCAP in 2003;
- 2) Information on how the settlement was paid, whether by lump sum payment or multiple payments over time;
- 3) Information if the settlement was paid directly from the state, or was money used from state and federal grants and tuition paid by parents, originally earmarked to fund the programs implemented by SCAP;
- 4) Information on who is responsible for public disclosure of the foregoing information. If the foregoing information was withheld, the name of the person(s) who were responsible for that decision;
- 5) Does the Director have the responsibility to disclose public information? If not, who does?

- 6) End of the year financial statement for 2003.

Complainant did not, however, submit this request to the Custodian on an official OPRA request form.

On June 21, 2006, Complainant sent a letter to the GRC stating that the following requests were included in his April 10, 2006 OPRA request and were not previously addressed:

- Records in the possession of SCAP which will show the source of the \$80,000 settlement paid to a former Assistant Director of SCAP;
- Records indicating the role of the records custodian and the duties associated with the position;
- Records indicating the job title and responsibilities of the person(s) in charge of disseminating information to the public;

Complainant did not submit this request to the Custodian on an official OPRA request form.

In order to be valid, an OPRA request must be in writing and submitted on an official OPRA request form. N.J.S.A. 47:1A-5.f; Advisory Opinion 2006-01; see also New Jersey Builders Ass'n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 181 (App. Div. 2007).

Complainant's April 10, 2006 OPRA request was submitted to SCAP on an official OPRA request form. It is therefore a valid OPRA request. The Complainant's April 10, 2006 OPRA request sought the following records:

- 1) Financial report for 2003;
- 2) Information concerning the amount of a settlement paid in 2003 by SCAP to a former Assistant Director;
- 3) Information concerning how the settlement was paid, *i.e.*, whether it was paid in lump sum or multiple payments;
- 4) Information as to whether tuition, state or federal grant monies were used to pay the settlement referenced above.

The Custodian responded to Complainant's April 10, 2006 OPRA request on April 14, 2006, within three (3) days of its receipt. In response to the Complainant's April 10, 2006 OPRA request, the Custodian provided:

- SCAP's 2003-2004 audited financial statement, which included the requested settlement;
- Copies of the two settlement checks provided to a former SCAP Assistant Director;
- A memorandum addressing Complainant's attention to page five of the 2003-2004 audited financial statement and explaining the allocation information he sought.

The Custodian certified that she provided all of the records responsive to Complainant's OPRA request on April 14, 2006. Because the Custodian granted access to the requested records within seven (7) business days of her receipt of the Complainant's OPRA request, the Custodian has not violated N.J.S.A. 47:1A-5.i.

Neither Complainant's April 14, 2006 e-mail nor his June 21, 2006 letter requesting additional records were submitted to SCAP on an official OPRA request form. These submissions are not, therefore, valid OPRA requests. N.J.S.A. 47:1A-5.f; Advisory Opinion 2006-01; see also New Jersey Builders Ass'n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 181 (App. Div. 2007).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Complainant's April 10, 2006 request for records was a valid OPRA request because it was submitted on an official OPRA request form from the agency. N.J.S.A. 47:1A-5.i.
2. Because the Custodian granted access to the requested records within seven (7) business days of her receipt of the Complainant's April 10, 2006 OPRA request, the Custodian has not violated N.J.S.A. 47:1A-5.i.
3. Because Complainant's April 14, 2006 e-mail and June 21, 2006 letter requesting additional records were not submitted to SCAP on an official OPRA request form, these submissions are not valid OPRA requests. N.J.S.A. 47:1A-5.f; Advisory Opinion 2006-01; see also New Jersey Builders Ass'n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 181 (App. Div. 2007).

Prepared By:

Karyn Gordon, Esq.
In House Counsel

Approved By:

Catherine Starghill, Esq.
Executive Director

May 23, 2007

GOVERNMENT RECORDS COUNCIL
Administrative Case Disposition – Not a valid OPRA request

GRC Complaint No: 2006-123
Complainant: Tyrone Jamison
Custodian: Somerset County Community Action Program, Jyotsana Dani
Date of Request: April 21, 2006
Date of Complaint: June 20, 2006

Case Disposition: Not a valid OPRA request

Type of Administrative Disposition: The Custodian certifies that the Complainant's April 21, 2006 letter was not a valid OPRA request because it was not submitted on an official OPRA request form. The Custodian certifies that the Complainant was provided a request form to file this request, but no form was received from the Complainant.

Applicable OPRA Provision:

N.J.S.A. 47:1A-5.f.:

"The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency..."

N.J.S.A. 47:1A-5.g.:

"A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof..."

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.

Effective Date of Disposition: December 14, 2006

Prepared By:

Colleen C. McGann
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

Distribution Date: December 15, 2006

Date: December 7, 2006