



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

December 22, 2009 Government Records Council Meeting

Vesselin Dittrich
Complainant

Complaint No. 2008-203

v.

City of Hoboken (Hudson)
Custodian of Record

At the December 22, 2009 public meeting, the Government Records Council (“Council”) considered the December 9, 2009 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. Because the Custodian certified that all records responsive to the Complainant’s OPRA request were provided to the Complainant within the statutorily mandated response time, and because the Complainant has failed to provide any evidence to contradict the Custodian’s certification, the Custodian has proven that all records responsive to the request were provided in a timely manner pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. Because the Custodian responded to the Complainant’s OPRA request in a timely manner by providing the record requested, the Custodian has not unlawfully denied access to the Complainant. The Complainant’s requested modification of his OPRA request after the Custodian responded by providing the requested record within the statutorily mandated response time and the Complainant’s refusal to submit a separate OPRA request for the additional records requested, does not result in a denial of access to the OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

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 22nd Day of December, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Harlynn A. Lack, Secretary
Government Records Council

Decision Distribution Date: January 5, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 22, 2009 Council Meeting**

**Vesselin Dittrich¹
Complainant**

GRC Complaint No. 2008-203

v.

**City of Hoboken (Hudson)²
Custodian of Records**

Records Relevant to Complaint: Roster of city employees in electronic format.

Request Made: August 5, 2008

Response Made: August 7, 2008

Custodian: Michael Mastropasqua, Clerk

GRC Complaint Filed: September 11, 2008³

Background

August 5, 2008

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

August 7, 2008

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the second (2nd) business day sending the Complainant a nine (9) page roster of city employees in electronic format.

August 7, 2008

E-mail from the Complainant to the Custodian. The Complainant acknowledges receipt of the roster of employees and states that he also wants the job titles.

August 7, 2008

E-mail from the Custodian to the Complainant. The Custodian informs the Complainant that he must file another OPRA request for the list of employee job titles.

August 8, 2008

E-mail from the Complainant to the Custodian. The Complainant states that he will not file another OPRA request and again asks for the job titles.

¹ No legal representation listed on record.

² Represented by Audra A. Pondish, Esq., of Wade, Long, Wood & Kennedy, LLC (Laurel Springs, NJ).

³ The GRC received the Denial of Access Complaint on said date.

August 15, 2008

E-mail from the Custodian to the Complainant. The Custodian states that upon advice of counsel the Complainant must send a request for additional information on another OPRA request.

September 11, 2008

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated August 5, 2008
- Custodian’s response to the OPRA request dated August 7, 2008
- E-mail from the Complainant to the Custodian dated August 8, 2008
- E-mail from the Custodian to the Complainant dated August 15, 2008

The Complainant files Denial of Access Complaint “Page 1 of 4” and “Page 2 of 4,” wherein he verifies that his OPRA request was provided to the Custodian on August 5, 2008.⁴

September 12, 2008

Offer of Mediation sent to both parties.

September 16, 2008

The Custodian agrees to mediate this complaint; the Complainant does not reply to the offer to mediate.

September 23, 2008

Request for the Statement of Information (“SOI”) sent to the Custodian.

September 24, 2008

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated August 5, 2008
- Custodian’s response to the OPRA request with an attached nine (9) page roster of city employees dated August 7, 2008
- E-mail from the Complainant to the Custodian dated August 7, 2008
- E-mail from the Custodian to the Complainant dated August 7, 2008
- E-mail from the Complainant to the Custodian dated August 8, 2008
- E-mail from the Custodian to the Complainant dated August 15, 2008

The Custodian neither certifies as to the nature of the search conducted for the requested records nor the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule

⁴ Denial of Access Complaint “Page 3 of 4” allows the Complainant to provide a detailed narrative of the alleged denial of access and “Page 4 of 4” is the page upon which the Complainant lists all records denied. These pages of the complaint are important because the information contained therein assists the GRC in better understanding the alleged denial of access. In particular, Page 4 of 4, when completed, allows the GRC to ensure that the records denied mirror the records requested; and if not, to obtain a clarification and perhaps rectify what could have been a causative factor in the denial.

established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that the Complainant filed his OPRA request with the Custodian on August 5, 2008 and the Custodian responded to the Complainant's request disclosing the requested roster of employees on August 7, 2008. The Custodian certifies that the Complainant then requested a list of job titles associated with each employee and the Custodian certifies that he asked the Complainant to file another OPRA request for those records; however, the Custodian certifies that the Complainant refused to do so.

The Custodian certifies that N.J.S.A. 47:1A-5 provides that he must grant or deny a request for government records as soon as possible but not later than seven (7) business days after receiving an OPRA request. The Custodian further certifies that this time period should not be shortened because the Complainant has decided to modify his request. The Custodian certifies that he should be entitled to the full amount of time under the statute to respond to an OPRA request. For this reason, the Custodian certifies that he insists that when a new record is requested, a new OPRA request must be filed. The Custodian certifies that the Complainant wanted to modify his complaint, but refused to file another OPRA request; therefore, the Custodian denied the Complainant's request to modify his August 5, 2008 OPRA request to include a list of job titles for city employees. The Custodian further certifies that if the Complainant submitted another OPRA request for the job title information the Custodian would have disclosed the records to the Complainant.

Analysis

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...[a] government record shall not include...*criminal investigatory records...*” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA states:

“[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 also states:

“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.

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.

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 evidence of record reveals that the Complainant submitted his OPRA request for a roster of city employees in electronic format to the Custodian on August 5, 2008. The evidence of record further reveals that the Custodian responded to the Complainant’s request in writing on August 7, 2008 disclosing a roster of city employees in electronic format to the Complainant. The job titles were not part of the record disclosed to the Complainant because they were not encompassed in the Complainant’s original OPRA request.

Accordingly, because the Custodian certified that all records responsive to the Complainant’s OPRA request were provided to the Complainant within the statutorily mandated response time, and because the Complainant has failed to provide any evidence to contradict the Custodian’s certification, the Custodian has proven that all records responsive to the request were provided in a timely manner pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

On August 7, 2008, after the Custodian responded to the Complainant’s OPRA request by disclosing all of the records responsive to the Complainant’s request, the Complainant attempted to modify his request by requesting additional records. The Custodian responded to the Complainant that same date, informing him that he would need to submit another OPRA request for the additional records. The Complainant refused to submit another OPRA request, and demanded that his August 5, 2008 request

be modified to reflect the additional records the Complainant was now seeking. The Custodian refused to accept modification of the Complainant's request and the Complainant filed a Denial of Access Complaint.

N.J.S.A. 47:1A-5.g. provides that a "...request for access to a government record shall be in writing and...conveyed to the appropriate custodian..." Once the custodian has received the request, N.J.S.A. 47:1A-5.i. mandates that the custodian must grant or deny access to the requested record within seven (7) business days, otherwise the custodian's failure to respond results in a "deemed" denial.

Because the Custodian responded to the Complainant's OPRA request in a timely manner by providing the record requested, the Custodian has not unlawfully denied access to the Complainant. The Complainant's requested modification of his OPRA request after the Custodian responded by providing the requested record within the statutorily mandated response time and the Complainant's refusal to submit a separate OPRA request for the additional records requested, does not result in a denial of access to the OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian certified that all records responsive to the Complainant's OPRA request were provided to the Complainant within the statutorily mandated response time, and because the Complainant has failed to provide any evidence to contradict the Custodian's certification, the Custodian has proven that all records responsive to the request were provided in a timely manner pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. Because the Custodian responded to the Complainant's OPRA request in a timely manner by providing the record requested, the Custodian has not unlawfully denied access to the Complainant. The Complainant's requested modification of his OPRA request after the Custodian responded by providing the requested record within the statutorily mandated response time and the Complainant's refusal to submit a separate OPRA request for the additional records requested, does not result in a denial of access to the OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

Prepared By: John E. Stewart
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.
Executive Director

December 9, 2009