



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

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

June 11, 2009 Government Records Council Meeting

Carolanne Schlosser
Complainant

Complaint No. 2009-45

v.

City of Union City (Hudson)
Custodian of Record

At the June 11, 2009 public meeting, the Government Records Council (“Council”) considered the May 20, 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 because the Custodian responded in writing directing the Complainant to obtain the requested records from the Union City Municipal Court and later certified that the City of Union City is not in possession of and does not maintain the requested summonses, there has been no unlawful denial of access pursuant to N.J.S.A. 47:1A-5.h. *See Neals v. City of Burlington Police Department*, GRC Complaint No. 2007-94 (May 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 11th Day of June, 2009

Robin Berg Tabakin, Chair
Government Records Council



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

Janice L. Kovach
Government Records Council

Decision Distribution Date: June 16, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 11, 2009 Council Meeting**

**Carolanne Schlosser¹
Complainant**

GRC Complaint No. 2009-45

v.

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

Records Relevant to Complaint: Copies of all summonses issued as part of the Clean Sweep program on the 200, 300 and 400 blocks of Fifth (5th) Street for the dates October 9, 2008, October 20, 2008 and November 10, 2008.

Request Made: November 22, 2008³

Response Made: December 2, 2008

Custodian: William Senande

GRC Complaint Filed: February 4, 2009⁴

Background

November 22, 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.

December 2, 2008

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request. The Custodian directs the Complainant to contact Union City Municipal Court ("Municipal Court") in order to obtain the records responsive.

February 4, 2009

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

- Complainant's OPRA request dated November 22, 2008.
- Letter from the Custodian to the Complainant dated December 2, 2008, attaching the Complainant's November 22, 2008, OPRA request with the Custodian's signature thereon.

¹ No legal representation listed on record.

² Represented by Jacquelin P. Gioioso, Esq., of Scarinci Hollenbeck (Camden, NJ).

³ The Complainant mailed her OPRA request dated November 22, 2008 on November 23, 2008.

⁴ The GRC received the Denial of Access Complaint on said date.

The Complainant states that she submitted her November 22, 2008, OPRA request to the Custodian on November 23, 2008. The Complainant states that the Custodian responded in writing on December 2, 2008 directing the Complainant to submit a request to the Municipal Court.

The Complainant did not agree to mediate this complaint.

March 4, 2009

Request for the Statement of Information sent to the Custodian.

March 23, 2009

Letter from GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for a Statement of Information on March 4, 2009 and to date has not received a response. Further, the GRC states that if the Statement of Information is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

March 25, 2009

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

- Complainant's OPRA request dated November 22, 2008.
- Letter from the Custodian to the Complainant dated December 2, 2008.⁵

The Custodian certifies that he received the Complainant's November 22, 2008 OPRA request on November 25, 2008. The Custodian states that he responded to the Complainant in writing on December 2, 2008, directing the Complainant to request the summonses from the Municipal Court.

The Custodian certifies that because he is not the custodian of record for the Municipal Court summonses and that the summonses are not maintained by the Custodian, he could not fulfill the Complainant's November 22, 2008, OPRA request. The Custodian certifies that he directed the Complainant to the Municipal Court to obtain the summonses requested. The Custodian asserts that to the best of his knowledge, the Complainant made a subsequent request to the Municipal Court.

Counsel apologizes for the tardiness of the SOI, citing that there was some confusion regarding additional complaints filed simultaneously with the instant complaint.⁶

Counsel asserts that Complainant's request for all summonses is overly broad and that pursuant to MAG Entertainment LLC v. Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), the Custodian was not required to conduct an open

⁵ The Custodian also attaches correspondence between the Complainant and the Municipal Court to reinforce the Custodian's position.

⁶ The Complainant filed two (2) other complaints against the Union City Parking Authority and Municipal Court and identified this Custodian as the custodian of record in both complaints.

ended search of the City's files. Counsel asserts that there is no need to address the overly broad argument, because the records were maintained by the Municipal Court and are governed by the Rules Governing the Courts of the State of New Jersey. Counsel contends that the Custodian properly referred the Complainant to the Municipal Court.

Counsel states that the GRC has previously dismissed complaints that request access to records of the judicial branch under OPRA for lack of jurisdiction. Counsel cites to Mertrud v. Township of Bryam Municipal Court, GRC Complaint No. 2004-80 (October 2004) and Schlosser v. City of Union City Municipal Court (Hudson), GRC Complaint No. 2009-46 (February 2009). Counsel asserts that neither the GRC nor the Custodian have jurisdiction over the Municipal Court records and this complaint should be dismissed.

April 20, 2009

E-mail from the GRC to the Custodian. The GRC states that the Custodian's December 2, 2008 written response does not clearly identify whether the Custodian is in possession of the records requested. The GRC requests that the Custodian certify to the following: whether any records responsive to the Complainant's November 22, 2008, OPRA request are in the possession of the Custodian either in original or copied form.

The GRC requests that the Custodian provide this certification to the GRC as soon as possible, but by close of business on April 22, 2009.

April 22, 2009

Custodian certification to the GRC. The Custodian certifies that the City of Union City is not in possession of any records responsive to the Complainant's November 22, 2008, OPRA request. Further, the Custodian certifies that the City of Union City does not maintain such summonses.

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 ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

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*.” (Emphasis added.) N.J.S.A. 47:1A-5.h.

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.

OPRA requires “[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*.” (Emphasis added.) N.J.S.A. 47:1A-5.h. Once a custodian has notified a requestor in writing within the statutorily mandated seven (7) business days as required under N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., the custodian’s duty under OPRA is fulfilled.

In this complaint, the Custodian responded in writing on the fifth (5th) business after receipt of the Complainant’s November 22, 2008 OPRA request stating that the requested records could be obtained by contacting the Municipal Court. Additionally, the Custodian certified on April 22, 2009 that the City of Union City is not in possession of and does not maintain the requested summonses. Therefore, because the Custodian responded in writing directing the Complainant to obtain the requested records from the Municipal Court and later certified that the City of Union City is not in possession of and does not maintain the requested summonses, there has been no unlawful denial of access pursuant to N.J.S.A. 47:1A-5.h. See Neals v. City of Burlington Police Department, GRC Complaint No. 2007-94 (May 2007).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian responded in writing directing the Complainant to obtain the requested records from the Union City Municipal Court and later certified that the City of Union City is not in possession of and does not maintain the requested summonses, there has been no unlawful denial of access pursuant to N.J.S.A. 47:1A-5.h. See Neals v. City of Burlington Police Department, GRC Complaint No. 2007-94 (May 2007).

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

May 20, 2009