



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 23, 2009 Government Records Council Meeting

Eddie William Dixon
Complainant

Complaint No. 2009-63

v.

Township of Hamilton (Mercer)
Custodian of Record

At the June 23, 2009 public meeting, the Government Records Council (“Council”) considered the June 16, 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 forwarded the Complainant’s OPRA request to the proper custodian of the court records requested and directed the Complainant to the custodian, she complied with N.J.S.A. 47:1A-5.h and did not unlawfully deny access to the requested records.
2. Requests for records made to the Judicial Branch of New Jersey State Government are not within the Council’s authority to adjudicate. N.J.S.A. 47:1A-7.g. See Vessio v. Township of Manchester, GRC Complaint No. 2006-130 (April 2008). Because the records requested by the Complainant were made, maintained and kept on file by the Municipal Court, the Council does not have jurisdiction to adjudicate the request after it was forwarded by the Custodian.

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 23rd 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.

Kathryn Forsyth
Government Records Council

Decision Distribution Date: June 29, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 23, 2009 Council Meeting**

**Eddie William Dixson¹
Complainant**

GRC Complaint No. 2009-63

v.

**Township of Hamilton (Mercer)²
Custodian of Records**

Records Relevant to Complaint:

With respect to court matters 1103-SP4-178789, 1103-SP4-178790, copies of:

- Dispositions,
- Court orders issued,
- All motions filed by the accused,
- All counterclaims filed by the accused,
- All of the accused's request for documents.

With respect to summons numbers 1103-SP4-178789, 1103-SP4-178790, copies of:

- Sound recordings of all proceedings.
- Statement of accounts.

Request Made: February 12, 2009

Response Made: February 12, 2009

Custodian: Eileen Gore

GRC Complaint Filed: February 20, 2009³

Background

February 12, 2009

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter citing to OPRA.

February 12, 2009

Custodian's response to the OPRA request. The Custodian responds in writing by e-mail to the Complainant's OPRA request on the same business day as receipt of such request. The Custodian states that because the requested records relate to a court matter, the Complainant's OPRA request has been forwarded to the Hamilton Township

¹ No legal representation listed on record.

² No legal representation listed on record.

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

Municipal Court Administrator, Lynn Hoagland, and that any further correspondence should be directed to Ms. Hoagland.⁴

February 20, 2009

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

- Complainant’s OPRA request dated February 12, 2009.
- E-mail from the Custodian to the Complainant dated February 12, 2009.⁵

The Complainant alleges that Hamilton Township is involved in a civil conspiracy to deprive him of his property and constitutional rights. The Complainant asserts that he requested the court records in order to show that the court has acted unlawfully.

The Complainant agreed to mediate this complaint.

March 31, 2009

E-mail from the GRC to the Custodian. The GRC asks the Custodian to certify to the statements made in the response given to the Complainant on February 12, 2009.

April 6, 2009

Custodian’s Certification with the following attachments:

- Complainant’s OPRA request dated February 12, 2009.
- E-mail from the Custodian to the Complainant dated February 12, 2009.

The Custodian certifies that she received the OPRA request in this matter and responded in writing to the Complainant on February 12, 2009. The Custodian certifies that in the response to the Complainant she informed the Complainant that the OPRA request was forwarded to Ms. Lynn Hoagland, the Municipal Court Clerk.

In addition, the Custodian certifies that the Complainant’s OPRA request was for records relating to a Hamilton Township Municipal Court matter. The Custodian certifies that she does not maintain municipal court records which, according to law, are maintained by the court.

April 14, 2009

E-mail from the Complainant to the GRC. The Complainant responds to the Custodian’s certification. The Complainant asserts that the Custodian, as the Hamilton Township Municipal Clerk, has the responsibility to provide the requested records under OPRA. The Complainant asserts that the municipal court is the judicial branch of the local municipal corporation and falls under the jurisdiction of OPRA.

⁴ The Complainant sent an e-mail to the Custodian asking why the court administrator is considered the custodian.

⁵ The Complainant submitted additional documents which are not relevant to the adjudication of this complaint.

April 29, 2009

E-mail from the GRC to the Custodian. The GRC asks the Custodian to certify as to whether or not she maintains copies of any of the requested court records for the Township's use or reference.

May 4, 2009

Letter and Certification from the Custodian to the GRC. The Custodian certifies that she does not maintain copies of any of the requested court records in this matter for the Township's use or reference.

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.

Further, 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.

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.

In this case, the Custodian responded in writing on the same day she received the OPRA request. The Custodian informed the Complainant that his request had been forwarded to the Municipal Court Administrator. The Custodian later certified that she does not maintain any of the records requested.

OPRA requires public agency officers or employees to forward an OPRA request to the proper custodian or to direct the requestor to the custodian. N.J.S.A. 47:1A-5.h. In this matter, the Custodian who received the request was not the custodian for the court records requested by the Complainant. The Custodian therefore forwarded the request to the proper custodian and informed the Complainant of the name and title of the proper custodian.

Because the Custodian forwarded the Complainant's OPRA request to the proper custodian of the court records requested and directed the Complainant to the custodian, she complied with N.J.S.A. 47:1A-5.h and did not unlawfully deny access to the requested records.

Whether the Government Records Council has jurisdiction over the Judicial Branch of Government?

OPRA provides that:

“[t]he council *shall not have jurisdiction* over the *Judicial* or Legislative Branches of State Government or any agency, officer, or employee of those branches.” (Emphasis added.) N.J.S.A. 47:1A-7.g.

Requests for records made to the Judiciary Branch of New Jersey State Government are not within the Council's authority to adjudicate. N.J.S.A. 47:1A-7.g. See Vessio v. Township of Manchester, GRC Complaint No. 2006-130 (April 2008). Because the records requested by the Complainant were made, maintained and kept on file by the Municipal Court, the Government Records Council does not have jurisdiction to adjudicate the request after it was forwarded by the Custodian.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian forwarded the Complainant's OPRA request to the proper custodian of the court records requested and directed the Complainant to the custodian, she complied with N.J.S.A. 47:1A-5.h and did not unlawfully deny access to the requested records.
2. Requests for records made to the Judiciary Branch of New Jersey State Government are not within the Council's authority to adjudicate. N.J.S.A. 47:1A-7.g. See Vessio v. Township of Manchester, GRC Complaint No. 2006-130 (April 2008). Because the records requested by the Complainant were made, maintained and kept on file by the Municipal Court, the Council

does not have jurisdiction to adjudicate the request after it was forwarded by the Custodian.

Prepared By: Elizabeth Ziegler-Sears, Esq.
Case Manager/Staff Attorney

Approved By: Catherine Starghill, Esq.
Executive Director

June 16, 2009