



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**September 24, 2013 Government Records Council Meeting**

Sabino Valdes  
Complainant

Complaint Nos. 2010-217 and 2010-258

v.

Township of Belleville (Essex)  
Custodian of Record

At the September 24, 2013 public meeting, the Government Records Council (“Council”) considered the September 17, 2013 Supplemental 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 it adopts the Administrative Law Judge’s September 3, 2013 Initial Order that the case be dismissed.

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 24th Day of September, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council



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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: September 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 24, 2013 Council Meeting**

**Sabino Valdes<sup>1</sup>  
Complainant**

**GRC Complaint Nos. 2010-217  
and 2010-258**

**v.**

**Township of Belleville,<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaints:**

GRC Complaint No. 2010-217:

1. Copy of the date stamped Notice of Claim and Amendment to the Notice of Claim filed by the Complainant with the Municipal Clerk on July 10, 2010 and July 17, 2010 relevant to Complaint No. 012584.

GRC Complaint No. 2010-258:

2. Copy of the Statement of Information (“SOI”) sent to the Government Records Council (“GRC”) in the matter of Valdes v. Twp. of Belleville (Essex), GRC Complaint No. 2010-217.
3. Copy of the original amendment to the initial notice of claim dated July 12, 2010.

**Custodian of Record:** Kelly A. Cavanagh

**Requests Received by Custodian:** August 5, 2010; September 13, and September 14, 2010

**Responses Made by Custodian:** No response; September 15, and September 22, 2010

**GRC Complaints Received:** August 19, 2010

**Background**

**June 26, 2012 Council Meeting:**

At its June 26, 2012 public meeting, the Council considered the June 19, 2012 Findings and Recommendations of the Executive Director in GRC Complaint No. 2010-217 and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian did not timely respond to the Complainant’s OPRA request. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Thomas Murphy, Esq. (Belleville, NJ).

either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The GRC declines to order disclosure of the Notice of Claim relevant to Complaint No. 012584 because the Custodian submitted this record to the Complainant with the Statement of Information.
3. Based on the contested facts in this complaint, the GRC is unable to determine whether Amendment to the Notice of Claim dated July 12, 2010 is the record responsive to the Complainant’s OPRA request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

#### March 27, 2012 Council Meeting:

At its March 27, 2012 public meeting, the Council considered the March 20, 2012 Findings and Recommendations of the Executive Director in Complaint No. 2010-258 and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The GRC does not have authority over the content of records provided to requestors pursuant to OPRA. Kwanzaa v. Dep’t of Corrections, Complaint No. 2004-167 (March 2005). Therefore, the Custodian has not unlawfully denied access to the requested Statement of Information because the Custodian granted access to said record in its entirety.
2. Based on the contested facts in this complaint, the GRC is unable to determine whether or not the Custodian provided the Complainant access to the amendment to the initial notice of claim dated July 12, 2010 in response to the Complainant’s request dated September 14, 2010. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On March 29, 2012, the Council's Interim Order in Complaint 2012-258 ("Order 2012-258") was distributed to the parties. Thereafter, on April 26, 2012, Complaint No. 2012-258 was transmitted to the Office of Administrative Law ("OAL").

On June 27, 2012, the Council's Interim Order in Complaint 2012-217 ("Order 2012-217") was distributed to the parties. Subsequently, on October 26, 2012, Complaint No. 2012-217 was transmitted to OAL.

On September 3, 2013, the Administrative Law Judge issued an order that the case be dismissed (see attached OAL Initial Decision dated September 3, 2013).

**Analysis**

No analysis required.

**Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council adopt the Administrative Law Judge's September 3, 2013 Initial Order that the case be dismissed.

Prepared By: Dawn R. SanFilippo, Esq.  
Senior Counsel

Approved By: Brandon D. Minde, Esq.  
Executive Director

September 17, 2013



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Acting Commissioner

**INTERIM ORDER**

**March 27, 2012 Government Records Council Meeting**

Sabino Valdes  
Complainant

Complaint No. 2010-258

v.

Township of Belleville (Essex)  
Custodian of Record

At the March 27, 2012 public meeting, the Government Records Council (“Council”) considered the March 20, 2012 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. The GRC does not have authority over the content of records provided to requestors pursuant to OPRA. Kwanzaa v. Dep’t of Corrections, GRC Complaint No. 2004-167 (March 2005). Therefore, the Custodian has not unlawfully denied access to the requested Statement of Information because the Custodian granted access to said record in its entirety.
2. Based on the contested facts in this complaint, the GRC is unable to determine whether or not the Custodian provided the Complainant access to the amendment to the initial notice of claim dated July 12, 2010 in response to the Complainant’s request dated September 14, 2010. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of March, 2012

Robin Berg Tabakin, Chair  
Government Records Council

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

Catherine Starghill, Executive Director  
Government Records Council

**Decision Distribution Date: March 29, 2012**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 27, 2012 Council Meeting**

**Sabino Valdes<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-258**

v.

**Township of Belleville (Essex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

September 13, 2010 OPRA request:

Copy of the Statement of Information (“SOI”) sent to the Government Records Council (“GRC”) in the matter of Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217.

September 14, 2010 OPRA request:

Copy of the original amendment to the initial notice of claim dated July 12, 2010.<sup>3</sup>

**Request Made:** September 13, 2010 and September 14, 2010

**Response Made:** September 15, 2010 and September 22, 2010

**Custodian:** Kelly A. Cavanagh

**GRC Complaint Filed:** September 28, 2010<sup>4</sup>

**Background**

**September 13, 2010**

Complainant’s first (1<sup>st</sup>) Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**September 14, 2010**

Complainant’s second (2<sup>nd</sup>) OPRA request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**September 15, 2010**

Custodian’s response to the Complainant’s September 13, 2010 OPRA request. The Custodian responds in writing on the second (2<sup>nd</sup>) business day following receipt of

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Thomas Murphy, Esq. (Belleville, NJ).

<sup>3</sup> The Complainant states that the Amendment to the Notice of Claim was sent via certified mail to the Township of Belleville (“Township”) on July 12, 2010 and received by the Township on July 17, 2010.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

such request. The Custodian states that attached is a copy of the SOI for Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217.

### **September 22, 2010**

Custodian's response to the Complainant's OPRA request dated September 14, 2010. The Custodian responds in writing via letter on the sixth (6<sup>th</sup>) business day following receipt of such request. The Custodian provides a copy of the amendment to the initial notice of claim dated July 12, 2010.

### **September 28, 2010**

Denial of Access Complaint filed with the GRC with the following attachments:

- E-mail from the Complainant to the Custodian dated August 31, 2010
- Letter from the Complainant to the GRC dated September 9, 2010
- Complainant's first (1<sup>st</sup>) OPRA request dated September 13, 2010
- Complainant's second (2<sup>nd</sup>) OPRA request dated September 14, 2010
- Custodian's SOI submitted to the GRC in Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217.

### OPRA Request dated September 13, 2010:

The Complainant states that the GRC sent an e-mail and letter to the Custodian dated August 31, 2010 requesting a Statement of Information in Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217. The Complainant also states that he sent a letter to the GRC on September 9, 2010 indicating that the Custodian failed to simultaneously provide him with a copy of the SOI relevant to Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217. The Complainant further states that he received a copy of the Custodian's SOI on September 14, 2010. The Complainant argues that the SOI submitted by the Custodian was incomplete and was not filed pursuant to the GRC's instructions. The Complainant states that the GRC reviewed the Custodian's SOI and informed the Complainant that the SOI was not deficient. The Complainant states that he sent the GRC a letter on September 16, 2010 asserting that the Custodian's SOI was incomplete because the Custodian failed to provide the document index table required by Item No. 9.<sup>5</sup> The Complainant asserts that the Custodian has not provided him with the required document index table for Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217.

### OPRA Request dated September 14, 2010:

The Complainant states that he filed an OPRA request on September 14, 2010 seeking a copy of an amendment to the initial notice of claim dated July 12, 2010. The Complainant also states that unlike in Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217, he did not request a date stamped copy. The Complainant further states that to date the Custodian has not replied to his second (2<sup>nd</sup>) OPRA request.<sup>6</sup>

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<sup>5</sup> The evidence of record indicates that the Custodian responded to the questions on the document index table, however, the Custodian did not provide said answers in table format.

<sup>6</sup> The Complainant does not include a copy of the Complainant's response dated September 22, 2010. Sabino Valdes v. Township of Belleville (Essex), 2010-258 – Findings and Recommendations of the Executive Director



The Complainant does not agree to mediate this complaint.

**September 29, 2010**

Request for the SOI sent to the Custodian.

**October 7, 2010**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated September 14, 2010<sup>7</sup>
- Letter from the Custodian to the Complainant dated September 22, 2010 with attachments<sup>8</sup>
- Custodian's SOI in Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217.

The Custodian certifies that the Complainant has had many dealings with the Township since the beginning of the year. The Custodian also certifies that the files maintained by the Clerk's Office, Township Attorney's Office and the Construction Code Office were reviewed in order to locate the records responsive to the request. The Custodian further certifies that notices of claims are retained for three (3) years. The Custodian additionally certifies that no records were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records. The Custodian certifies that she has provided all records responsive to this OPRA request.

The Custodian certifies that she received the Complainant's second (2<sup>nd</sup>) OPRA request on September 14, 2010. The Custodian also certifies that on September 15, 2010 she provided the Complainant with a copy of the SOI relevant to Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217. The Custodian further certifies that on September 22, 2010 she provided a copy of the record responsive to the Complainant's second (2<sup>nd</sup>) OPRA request.

**October 12, 2010**

Facsimile from the Complainant to the GRC. The Complainant responds to the Custodian's SOI. The Complainant asserts that the Custodian's SOI was not filed pursuant to the GRC's instructions because part two (2) of Item No. 9 states that "the Custodian must provide the document index table below. The document index table is required in the table format..." The Complainant also asserts that in the Custodian's SOI failed to include a copy of the record responsive to his OPRA request dated September 14, 2010. The Complainant further asserts that instead of the amendment to the initial notice of claim dated July 12, 2010, the Custodian provided a copy of the initial notice of claim dated July 7, 2010.<sup>9</sup>

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<sup>7</sup> The Custodian does not include a copy of the Complainant's first (1<sup>st</sup>) OPRA request dated September 13, 2010. Rather, the Custodian encloses a copy of the Complainant's OPRA request dated August 2, 2010 relevant to Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217.

<sup>8</sup> The Custodian attaches a copy of the amendment to the initial notice of claim dated July 12, 2010 in response to the Complainant's second (2<sup>nd</sup>) OPRA request dated September 14, 2010.

<sup>9</sup> The Complainant attaches a copy of the Custodian's letter dated September 22, 2010 with a copy of the Initial Notice of Claim, not the Amendment to the Notice of Claim as the Complainant requested on September 14, 2010.

The Complainant argues that the legal standards the GRC must consider when deciding if a Custodian has knowingly and willfully violated OPRA are: 1) the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); 2) the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); 3) the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); 4) the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); 5) the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J.Super. 86, 107 (App. Div. 1996)).

The Complainant argues that the Custodian is ignoring the legal standards when filing the SOI. The Complainant also argues that the Custodian is deliberately refraining from listing in the SOI the amendment to the initial notice of claim dated July 12, 2010 responsive to the OPRA request dated September 14, 2010. The Complainant further argues that the Custodian has failed to comply with his OPRA request dated September 14, 2010. The Complainant argues that the Custodian's actions cannot be determined to be merely negligent conduct.

The Complainant requests that the GRC instruct the Custodian to provide a copy of the record responsive to his OPRA request dated September 14, 2010 for an *in camera* review. The Complainant also requests that the GRC instruct the Custodian to provide a copy of the SOI to the Complainant for an *in camera* review.

### **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 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 Request dated September 13, 2010:

In the matter before the Council, the Complainant asserted in the Denial of Access Complaint that the SOI which he received from the Custodian in response to his September 13, 2010 OPRA request was incomplete because the Custodian failed to provide the document index table required by Item No. 9. In the SOI, the Custodian certified that on September 15, 2010, the second (2<sup>nd</sup>) business day following receipt of the Complainant’s September 13, 2010 OPRA request, the Custodian provided a copy of the record requested.

Although the Complainant claimed that the record which the Custodian provided to him in response to the OPRA request dated September 13, 2010, the SOI in Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217, was incomplete because the Custodian failed to provide the document index table required by Item No. 9, the evidence of record indicates that the Custodian provided this record to the Complainant in its entirety. The question of whether the SOI submitted by the Custodian in Valdes v. Township of Belleville (Essex), GRC Complaint No. 2010-217, which the Custodian provided in response to this OPRA request, is legally sufficient in that matter will be addressed in that matter. For the purposes of the matter now before the Council, the GRC does not have authority over the content of records provided to requestors pursuant to OPRA. Kwanzaa v. Dep’t of Corrections, GRC Complaint No. 2004-167 (March 2005). Therefore, the Custodian has not unlawfully denied access to the requested SOI because the Custodian granted access to said record in its entirety.

#### OPRA Request dated September 14, 2010:

The Complainant also asserted that he filed an OPRA request on September 14, 2010 seeking a copy of an amendment to the initial notice of claim dated July 12, 2010 to which the Custodian failed to reply. The Custodian certified in the SOI that she responded to the Complainant’s OPRA request dated September 14, 2010 on September 22, 2010, the sixth (6<sup>th</sup>) business day following receipt of the request, and provided a copy of the amendment to the initial notice of claim dated July 12, 2010. The Custodian also certified that she provided to the Complainant all records which are responsive to his OPRA requests.

However, in his response to the Custodian’s SOI, the Complainant asserted that the Custodian failed to respond to the OPRA request he filed on September 14, 2010 seeking a copy of an amendment to the initial notice of claim dated July 12, 2010. The

Complainant also asserted that the Custodian's SOI in this matter failed to include a copy of the record responsive to his OPRA request dated September 14, 2010. The Complainant further asserted that instead of the amendment to the initial notice of claim dated July 12, 2010, the Custodian provided to him a copy of the initial notice of claim dated July 7, 2010.

Therefore, based on the contested facts in this complaint, the GRC is unable to determine whether or not the Custodian provided the Complainant access to the amendment to the initial notice of claim dated July 12, 2010 in response to the Complainant's request dated September 14, 2010. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The GRC does not have authority over the content of records provided to requestors pursuant to OPRA. Kwanzaa v. Dep't of Corrections, GRC Complaint No. 2004-167 (March 2005). Therefore, the Custodian has not unlawfully denied access to the requested Statement of Information because the Custodian granted access to said record in its entirety.
2. Based on the contested facts in this complaint, the GRC is unable to determine whether or not the Custodian provided the Complainant access to the amendment to the initial notice of claim dated July 12, 2010 in response to the Complainant's request dated September 14, 2010. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Harlynn A. Lack, Esq.  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

March 20, 2012