



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

June 26, 2012 Government Records Council Meeting

Deborah Sutton
Complainant

Complaint No. 2011-177

v.

Township of Mantua (Gloucester)
Custodian of Record

At the June 26, 2012 public meeting, the Government Records Council (“Council”) considered the June 19, 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 because the Custodian has certified that no records responsive to the Complainant’s OPRA request exist and because there is no evidence in the record to refute the Custodian’s certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6. See also, Paff v. Township of Blairstown (Warren), GRC Complaint No. 2009-53 (February 2010).

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 26th Day of June, 2012

Steven F. Ritardi, Esq., Acting Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: June 28, 2012



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 26, 2012 Council Meeting**

**Deborah Sutton¹
Complainant**

GRC Complaint No. 2011-177

v.

**Township of Mantua (Gloucester)²
Custodian of Records**

Records Relevant to Complaint:

The original bond books for 2005, 2006, and 2007.³

Request Made: May 5, 2011

Response Made: May 10, 2011

Custodian: Shawn Menzies

GRC Complaint Filed: May 16, 2011⁴

Background

May 5, 2011

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.

May 10, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The Custodian states that she spoke with the Chief Financial Officer and she was informed that there are no bond books for 2005, 2006, and 2007 because the Township did not go out to bond in those years.

May 10, 2011

E-mail from the Complainant to the Custodian. The Complainant contends that the Township was on bond during 2005, 2006, and 2007 and alleges that the records must be "in hiding."

May 11, 2011

E-mail from the Custodian to the Complainant. The Custodian asserts that none of the records the Complainant seeks are "in hiding" and there are no bond books that are

¹ No legal representation listed on record.

² Represented by Michael Angelini, Esq., of Angelini, Viniar, & Freedman (Woodbury, NJ).

³ The Complainant also lists additional records that are not relevant to the adjudication of this complaint.

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

responsive to the Complainant's request. The Custodian states that she is willing to help the Complainant with forming her request if necessary.

May 16, 2011

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

- Complainant's OPRA request dated May 5, 2011
- E-mail from the Custodian to the Complainant dated May 10, 2011
- E-mail from the Complainant to the Custodian dated May 10, 2011
- E-mail from the Custodian to the Complainant dated May 11, 2011⁵

The Complainant declines to make any argument in support of her Complaint. The Complainant does not agree to mediate this complaint.

May 25, 2011

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

May 25, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated May 5, 2011
- E-mail from the Custodian to the Complainant dated May 10, 2011
- E-mail from the Complainant to the Custodian dated May 10, 2011
- E-mail from the Custodian to the Complainant dated May 11, 2011

The Custodian certifies that while bond books must be maintained for six (6) years after the date of cancellation of maturity, a search for the records yielded no records that were responsive to the Complainant's request. The Custodian further certifies that she has informed the Complainant that there are no records responsive to her request. The Custodian maintains that there has not been an unlawful denied of access.

Analysis

Whether the Custodian unlawfully denied the Complainant 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:

⁵ The Complainant attaches additional documentation that is not relevant to the adjudication of this complaint.

“... 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.

In the instant matter, while the Complainant has declined to make any supporting arguments in her Denial of Access Complaint, the evidence in the record indicates the Complainant believes that the Township of Mantua is unlawfully withholding access to records that are responsive to her request for “bond books.” However, the Custodian responded to the Complainant’s request in writing within the statutorily mandated seven business days of receipt thereof, informing her that there are no records responsive to her request, and certified to such in the SOI. The Complainant has failed to submit any evidence to refute the Custodian’s certification in this regard.

In the absence of any credible evidence to the contrary, a custodian’s certification that a reasonable search failed to produce requested records prevails. Accordingly, in Paff v. Township of Blairstown (Warren), GRC Complaint No. 2009-53 (February 2010), the GRC held that the Custodian’s certification that a fruitless search involving the assistance of police officials, a risk management consultant, and the township attorney qualified as sufficient evidence to prove that the requested records were not in the township’s possession at the time of the complainant’s request.

In addition, the Council has consistently held that no denial of access occurs when a custodian has demonstrated that no records responsive to a complainant’s request exist. In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The custodian responded stating that there was no record of any telephone calls made to the complainant. The custodian subsequently certified that no records responsive to the complainant’s request existed and the complainant submitted no evidence to refute said certification. The GRC held that the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed.

Therefore, because the Custodian has certified that no records responsive to the Complainant's OPRA request exist and because there is no evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6. *See also*, Paff v. Township of Blirstown (Warren), GRC Complaint No. 2009-53 (February 2010).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian has certified that no records responsive to the Complainant's OPRA request exist and because there is no evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6. *See also*, Paff v. Township of Blirstown (Warren), GRC Complaint No. 2009-53 (February 2010).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

June 19, 2012