



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

July 29, 2014 Government Records Council Meeting

Margaret Rieger
Complainant

Complaint No. 2011-333

v.

Township of Livingston (Essex)
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 2014 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 the Council should accept the Honorable Imre Karaszegi, Jr.’s, Administrative Law Judge, June 13, 2014, Initial Decision ordering that this complaint be dismissed because “. . . there has been no showing that [the Custodian] knowingly and willfully violated OPRA or had knowledge of the existence of the requested records in archived form or otherwise.”

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 29th Day of July, 2014

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: July 31, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 29, 2014 Council Meeting**

**Margaret Rieger¹
Complainant**

GRC Complaint No. 2011-333

v.

**Township of Livingston (Essex)²
Custodian of Records**

Records Relevant to Complaint:

January 14, 2011:³

1. Any permits, documents, photographs, diagrams, notations of conversation, activity logs, relating to 190 East Northfield Road Livingston, NJ, that have been generated, maintained or received by the Township of Livingston (“Township”) agencies.
2. Any permits, documents, photographs, diagrams, notations of conversation, activity logs, relating to 184 East Northfield Road Livingston, NJ, that have been generated, maintained or received by the Township’s agencies.⁴

January 31, 2011:⁵

1. All police reports that involved either of the Officer Kelly brothers in relation to 184 East Northfield Road Livingston, NJ, and 190 East Northfield Road Livingston, NJ. Either officer as the reporting officer, assisting at the scene or the supervising Officer in relation to Anthony Cupo, Christine Robertello, Stepping Forward Counseling Center or the Complainant, from May 2007 through the present.
2. Latest update on all correspondence, notes, letters, *etc.* on statute of tort claims of Anthony Cupo, Christine Robertello or Stepping Forward Counseling Center. Was any lawsuit filed? Any monies transferred? Any resolution?

¹ No legal representation listed on record.

² Represented by Sharon L. Weiner, Esq., of Murphy McKeon, P.C. (Riverdale, NJ).

³ The Complainant filed two (2) separate OPRA requests for these records. All of these requests were the subject of the Denial of Access Complaint. However, the GRC refers to these requests as a single request for the purposes of this adjudication.

⁴ The Complainant states that these agencies do not include the Police Department, Municipal Court or the Water Departments.

⁵ The Complainant filed two (2) separate OPRA requests for these records. All of these requests were the subject of the Denial of Access Complaint. However, the GRC refers to these requests as a single request for the purposes of this adjudication.

Custodian of Record: Glenn R. Turtletaub

Request Received by Custodian: January 14, 2011 and January 31, 2011

Response Made by Custodian: January 31, 2011⁶

GRC Complaint Received: November 2, 2011

Background

February 26, 2013 Council Meeting:

At its February 26, 2013, public meeting, the Council considered the January 22, 2013 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, found that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's first (1st) and second (2nd) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests 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. Because the Complainant's second (2nd) request Item No. 2 fails to seek a specifically identifiable government record and instead asks questions, said request is invalid under OPRA pursuant to MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), NJ Builders Ass'n v. NJ Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). *See also* Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).
3. Because the Custodian certified in the Statement of Information that the records responsive for the first (1st) OPRA request Item No. 2 do not exist, and there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.
4. The GRC is unable to determine whether there are additional records responsive to the Complainant's second (2nd) request Item No. 1, this complaint should be referred to the Office of Administrative Law for a hearing to resolve said facts. The Office of Administrative Law should also determine if the Custodian knowingly and willfully violated OPRA if found to have unlawfully denied access to the requested records.

⁶ The Custodian failed to respond to the Complainant's second (2nd) OPRA request.

Procedural History:

On February 27, 2013, the Council distributed its Interim Order to all parties. On June 17, 2013, the complaint was transmitted to the Office of Administrative Law (“OAL”). On June 13, 2014, the Honorable Imre Karaszegi, Jr., Administrative Law Judge (“ALJ”), issued an Initial Decision in this matter.⁷

Analysis

Administrative Law Judge’s Initial Decision

The ALJ’s findings of fact are entitled to deference from the GRC because they are based upon the ALJ’s determination of the credibility of the parties. “The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility.” In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), *certif. denied* 121 N.J. 615 (1990). The Appellate Division affirmed this principle, underscoring that, “under existing law, the [reviewing agency] must recognize and give due weight to the ALJ’s unique position and ability to make demeanor-based judgments.” Whasun Lee v. Bd. of Educ. of the Twp. of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. “When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ’s credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole.” Cavalieri v. Bd. of Tr. of Pub. Emp. Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ’s recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep’t of Health v. Tegnazian, 194 N.J. Super. 435, 442-43 (App. Div. 1984). The purpose of such findings “is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor.” Id. at 443. Additionally, the sufficiency of evidence “must take into account whatever in the record fairly detracts from its weight”; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent’s Hosp. v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

The ALJ’s June 13, 2014 Initial Decision, set forth in full as “Exhibit A”, concluded that:

I **ORDER** that the [Custodian] not be subject to a civil penalty. I also **ORDER** that the complaint against the [Township] be **DISMISSED**, as there has been no showing that [the Custodian] knowingly and willfully violated OPRA or had knowledge of the existence of the requested records in archived form or otherwise.

⁷ On July, 10, 2014, the GRC requested a five (5) day extension of the 45-day statutory period, or until August 2, 2014, to accept, reject or modify the ALJ’s Initial Decision. Same was granted on July 15, 2014.

The GRC has reviewed the ALJ's Initial Decision and recommends that the Council accept said decision ordering that this complaint be dismissed because “. . . there has been no showing that [the Custodian] knowingly and willfully violated OPRA or had knowledge of the existence of the requested records in archived form or otherwise.”

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Council should accept the Honorable Imre Karaszegi, Jr.'s, Administrative Law Judge, June 13, 2014, Initial Decision ordering that this complaint be dismissed because “. . . there has been no showing that [the Custodian] knowingly and willfully violated OPRA or had knowledge of the existence of the requested records in archived form or otherwise.”

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

July 22, 2014



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

INTERIM ORDER

February 26, 2013 Government Records Council Meeting

Margaret Rieger
Complainant

Complaint No. 2011-333

v.

Township of Livingston (Essex)
Custodian of Record

At the February 26, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 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 Custodian did not bear his burden of proof that he timely responded to the Complainant’s first (1st) and second (2nd) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Because the Complainant’s second (2nd) request Item No. 2 fails to seek a specifically identifiable government record and instead asks questions, said request is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). *See also* Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).
3. Because the Custodian certified in the Statement of Information that the records responsive for the first (1st) OPRA request Item No. 2 do not exist, and there is no competent, credible evidence in the record to refute the Custodian’s certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.



4. The GRC is unable to determine whether there are additional records responsive to the Complainant's second (2nd) request Item No. 1, this complaint should be referred to the Office of Administrative Law for a hearing to resolve said facts. The Office of Administrative Law should also determine if the Custodian knowingly and willfully violated OPRA if found to have unlawfully denied access to the requested records.

Interim Order Rendered by the
Government Records Council
On The 26th Day of February, 2013

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

Robin Berg Tabakin, Esq., Chair
Government Records Council

Decision Distribution Date: February 27, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2013 Council Meeting**

**Margaret Rieger¹
Complainant**

GRC Complaint No. 2011-333

v.

**Township of Livingston (Essex)²
Custodian of Records**

Records Relevant to Complaint:

January 14, 2011:³

1. Any permits, documents, photographs, diagrams, notations of conversation, activity logs, relating to 190 East Northfield Road Livingston, NJ, that have been generated, maintained or received by the Township of Livingston (“Township”) agencies.
2. Any permits, documents, photographs, diagrams, notations of conversation, activity logs, relating to 184 East Northfield Road Livingston, NJ, that have been generated, maintained or received by the Township’s agencies.⁴

January 31, 2011:⁵

1. All police reports that involved either of the Officer Kelly brothers in relation to 184 East Northfield Road Livingston, NJ, and 190 East Northfield Road Livingston, NJ. Either officer as the reporting officer, assisting at the scene or the supervising Officer in relation to Anthony Cupo, Christine Robertello, Stepping Forward Counseling Center or the Complainant, from May 2007 through the present.
2. Latest update on all correspondence, notes, letters, etc. on statute of tort claims of Anthony Cupo, Christine Robertello or Stepping Forward Counseling Center. Was any lawsuit filed? Any monies transferred? Any resolution?

¹ No legal representation listed on record.

² Represented by Sharon L. Weiner, Esq., of Murphy McKeon, P.C. (Riverdale, NJ).

³ The Complainant filed two (2) separate OPRA requests for these records. All of these requests were the subject of the Denial of Access Complaint. However, the GRC refers to these requests as a single request for the purposes of this adjudication.

⁴ The Complainant states that these agencies do not include the Police Department, Municipal Court or the Water Departments.

⁵ The Complainant filed two (2) separate OPRA requests for these records. All of these requests were the subject of the Denial of Access Complaint. However, the GRC refers to these requests as a single request for the purposes of this adjudication.

Request Made: January 14, 2011 and January 31, 2011

Response Made: January 31, 2011⁶

Custodian: Glenn R. Turteltaub

GRC Complaint Filed: November 2, 2011⁷

Background

January 14, 2011

Complainant's first (1st) Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form. The Complainant indicates that she prefers to pick up the requested records.

January 31, 2011

Custodian's response to the OPRA request. The Complainant visits the Custodian's office. The Custodian responds in writing on the official OPRA request form on the tenth (10th) business day following receipt of such request. The Custodian provides the Complainant with the following records responsive to request Item No. 1: 1) one (1) page entitled "List of Applications"; 2) one (1) page, "Certificate of Approval Permit #20100855; 3) one (1) page Permit 20100855 Project Inspection Activity Report; 4) one (1) page Construction Permit #20100855. The Custodian notes on the Complainant's OPRA request form that there are no records responsive to request Item No. 1 from the Planning or Engineering Department. The Custodian verbally informs the Complainant that any additional records responsive to her request do not exist. The Custodian also notes on the Complainant's OPRA request form that there are no records responsive to request Item No. 2.

January 31, 2011

Complainant's second (2nd) OPRA request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form. The Complainant indicates that she prefers to pick up the requested records.⁸

November 2, 2011

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

- Complainant's OPRA request dated January 14, 2011
- Complainant's OPRA request dated January 31, 2011.

First (1st) OPRA request:

The Complainant states that she filed her first (1st) OPRA request on January 14, 2011. The Complainant also states that she was only provided with one (1) page responsive to request Item No. 1.⁹ The Complainant also states that she asked the Custodian where were the other records responsive to request Item No. 1. The

⁶ The Custodian failed to respond to the Complainant's second (2nd) OPRA request.

⁷ The GRC received the Denial of Access Complaint on said date.

⁸ The Custodian failed to respond to the Complainant's second (2nd) OPRA request.

⁹ The Complainant does not state which record responsive she received.

Complainant further states that the Custodian informed her that these records do not exist. The Complainant states that request Item No. 2 was based on several inspections and violations found by the Township inspectors. The Complainant also states that the Custodian informed her that there was no log of activity responsive to her request Item No. 2. The Complainant further states that she saw three (3) pages responsive to request Item No. 2, but she never received copies of these pages.

Second (2nd) OPRA request:

The Complainant states that she filed her second (2nd) OPRA request on January 31, 2011. The Complainant also states that she never received a response to her request.

The Complainant does not agree to mediate this complaint.

November 9, 2011

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

November 14, 2011

E-mail from the Custodian to the GRC. The Custodian requests a five (5) business day extension to complete the SOI.

November 15, 2011

E-mail from the GRC to the Custodian. The GRC grants the Custodian a five (5) business day extension until November 25, 2011 to complete the SOI.

November 25, 2011

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated January 14, 2011
- Custodian’s response to the Complainant’s OPRA request dated January 31, 2011 with attachments.¹⁰
- Complainant’s OPRA request dated January 31, 2011.

First (1st) OPRA request:

The Custodian certifies that his search for the requested records included sending out an e-mail on January 18, 2011 to the Building Department, Planning Department, Health Department, Township Manager and Township Attorney for any records responsive to the Complainant’s request.¹¹ The Custodian also certifies that the records responsive to request Item No. 1 were supplied by the Building Department. The Custodian further certifies that he provided access to all the records responsive to request Item No. 1. The Custodian additionally certifies that there were no records responsive to request Item No. 2.

Second (2nd) OPRA request dated January 31, 2011:

¹⁰ The Custodian includes the records responsive to the Complainant’s request Item No. 1.

¹¹ The Custodian did not certify whether any records responsive to the Complainant’s OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

The Custodian certifies that he sent an e-mail to the Police Department on February 9, 2011 requesting any records responsive to request Item No. 1. The Custodian also certifies that upon receipt of the Complainant's Denial of Access Complaint, he followed up with the Police Department again to obtain records responsive to request Item No. 1.¹² The Custodian further certifies that although the Complainant's request for Item No. 1 sought records from 2007, the Police Department changed their computerized document retention system in 2009 and can only retrieve records since 2009.

The Custodian argues that the Complainant's request Item No. 2 is not valid because it asks questions and does not request specific records. The Custodian certifies that a review of the Township files revealed a filing of a Tort Claim notice dated September 30, 2010, which was forwarded to the Township Attorney on October 14, 2010. The Custodian also certifies that a further review of files showed that there was no further activity on this claim. The Custodian further certifies that, in order to confirm that there was no further activity, he contacted the Township's Insurance provider.

December 10, 2011

Letter from the Complainant to the GRC. The Complainant states that she went to Town Hall on January 28, 2011 to inquire about the status of her first (1st) OPRA request and spoke with Grace Russo ("Ms. Russo"), Receptionist, asking to speak with Ms. Renee Resky ("Ms. Resky"), Custodian's Assistant. The Complainant also states that Ms. Russo informed her that Ms. Resky does not work on Fridays. The Complainant additionally states that she received a telephone call from Ms. Resky on January 31, 2011 asking the Complainant to come to the Custodian's office. The Complainant states that when she visited the Custodian's office she was not provided with all the records responsive to request Item No. 1.¹³ The Complainant asserts that there are records responsive to request Item No. 2. The Complainant states that on January 31, 2011 while sitting in the Custodian's Office, and that Ms. Resky was holding records responsive to request Item No. 2. The Complainant also states that she was not given the opportunity to review these records.

The Complainant states that with regards to her second (2nd) OPRA request Item No. 1, the Officer Kelly brothers were heavily involved in multiple incidents in relation to 184 East Northfield Road and 190 East Northfield Road. The Complainant asserts that there should be many police reports available for 2009 and 2010 in response to her request. The Complainant also asserts that Captain Gary Marshutz and Chief of Police Craig Handshuh were aware of several incidents concerning 184 East Northfield Road and 190 East Northfield Road in June 2009 and July 2010. The Complainant states that the Custodian did not provide copies of these police reports.

The Complainant argues that her second (2nd) OPRA request Item No. 2 does specifically identify a government record. The Complainant states she requested an "update." The Complainant states she previously sought records regarding the tort claims under OPRA. The Complainant also states she was seeking an update regarding the

¹² The Custodian includes a copy of an investigation report dated August 19, 2010 along with the SOI.

¹³ The Custodian certified in the SOI that he provided all the records responsive to the first (1st) OPRA request Item No. 1.

lawsuit identified this previous request. The Complainant further states that the Custodian should understand what the Complainant requested. The Complainant additionally states that she never received a response from the Custodian for request Item No. 2.¹⁴

November 15, 2012

E-mail from the GRC to the Custodian. The GRC states it needs additional information to adjudicate the Denial of Access Complaint. The GRC also states that the Custodian certified in the SOI that the Police Department changed their computerized document retention system in 2009 and can only retrieve records since 2009. The GRC further states that the Complainant asserted in her letter dated December 10, 2011 that there were several incidents concerning 184 East Northfield Road and 190 East Northfield Road between June 2009 and July 2010, but copies of these reports were not provided. The GRC requests the Custodian to certify if there are any additional police reports responsive to the Complainant's second (2nd) OPRA request Item No. 1, in addition to the investigation report dated August 19, 2010 provided along with the SOI.

November 20, 2012

E-mail from the Custodian to the GRC. The Custodian certifies that upon receipt of the GRC's e-mail dated November 15, 2012, he inquired again to the Livingston Police Department whether there were any other reports responsive to the second (2nd) OPRA request Item No. 1. The Custodian also certifies that Livingston Police Captain Marshuetz represented to the Custodian that no other responsive documents exist. The Custodian certifies that based on the representations from the Livingston Police Department, no other reports responsive exist.

December 3, 2012

Facsimile from the Complainant to the GRC. The Complainant states that there are additional police reports responsive in addition to the one received along with the SOI. The Complainant attaches copies of three additional police reports dated June 9, 2010 and two (2) dated July 21, 2010.¹⁵ The Complainant states that there are records responsive to her first (1st) OPRA request Item No. 2. The Complainant also states that permits are required for fences since 2003. The Complainant further states that a fence was installed at 184 East Northfield Road Livingston, NJ.

Analysis

Whether the Custodian timely responded to the Complainant's first (1st) and second (2nd) OPRA requests?

OPRA provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the

¹⁴ The Complainant makes additional arguments previously made in her Denial of Access Complaint. The Complainant also includes additional documentation not relevant to the adjudication of this complaint.

¹⁵ The Complainant makes additional arguments not relevant to the adjudication of this complaint.
Margaret Rieger v. Township of Livingston (Essex), 2011-333 – Findings and Recommendations of the Executive Director

form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5(g).

Further, OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5(i).

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). As also prescribed under N.J.S.A. 47:1A-5(i), a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).¹⁶ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request 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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the instant complaint, the Complainant filed her first (1st) OPRA request with the Custodian on January 14, 2011. The Custodian certified in the SOI that he responded to the Complainant’s first (1st) OPRA request on January 31, 2011, the tenth (10th) business day following receipt of such request. Further the Complainant filed her second (2nd) OPRA request on January 31, 2011. The Complainant asserted in her Denial of Access Complaint that she never received a response to this request. The Custodian certified in the SOI that he sent an e-mail to the Police Department on February 9, 2011 requesting any records responsive to request Item No. 1. However, there is no evidence in the record that the Custodian responded to the Complainant’s second (2nd) OPRA request.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s first (1st) and second (2nd) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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, supra.

¹⁶ It is the GRC’s position that a custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

The Council notes that although the Custodian failed to timely respond to the Complainant's first (1st) OPRA request, he certified in the SOI that he provided access to all the records responsive to request Item No. 1. The Complainant asserted in a letter dated December 10, 2011 to the GRC that she was not provided with all the records responsive to request Item No. 1. However, the Council lacks the authority over whether an agency should maintain records responsive. See N.J.S.A. 47:1A-7(b) and Gillespie v. Newark Public Schools (Essex), GRC Complaint No. 2004-106 (March 2005).

Whether the Complainant's second (2nd) OPRA request Item No. 2 is valid?

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.

In the instant complaint the Complainant's second (2nd) request, Item No. 2 inquired about the "latest update on all correspondence, notes, letters on statute of tort claims...was any lawsuit filed? any monies transferred? any resolution?" The Complainant's requests fails to identify a specific government record, rather the Complainant asks a series of questions.

The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make*

identifiable government records 'readily accessible for inspection, copying, or examination.' N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). As the court noted in invalidating MAG's request under OPRA:

"Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.* at 549.

The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.*

In addition, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹⁷ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."¹⁸

Moreover, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court enumerated the responsibilities of a custodian and a requestor as follows:

"OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a request, "indicate the specific basis." N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*" (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

¹⁷ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁸ As stated in Bent, *supra*.

Moreover, the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...” Accordingly, the test under MAG then, is whether a requested record is a *specifically identifiable* government record.

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant’s request sought:

- Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
- Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 5: From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the complainant’s request, the Council found that “[b]ecause the Complainant’s OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005).”

The Council also decided a similar issue in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Specifically, the complainant submitted an OPRA request to the Borough on September 13, 2007 seeking answers to five (5) questions regarding a property named the Villa Maria. The Council held that the Complainant’s request was invalid because it failed to identify a specific government record. *See also* Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

The Complainant’s request is invalid because it fails to identify a government record. The Complainant asks the Custodian questions with regards to a potential

lawsuit. The Custodian is not obligated to answer the Complainant's questions pursuant to OPRA; he is only required to search for records responsive to a request. Thus, the Complainant's second (2nd) request Item No. 2 is invalid under OPRA.

Therefore, because the Complainant's second (2nd) request Item No. 2 fails to seek a specifically identifiable government record and instead asks questions, said request is invalid under OPRA pursuant to MAG, supra, Bent, supra, New Jersey Builders, supra, and Watt, supra. See also Ohlson, supra.

Whether any records responsive to the Complainant's first (1st) OPRA request Item No. 2 and second (2nd) OPRA request Item No. 1 exist?

The Complainant's first (1st) request Item No. 2 sought "any permits, documents photographs, diagrams, notations, of conversation, activity logs relating to 184 East Northfield Road..." The Custodian responded to the Complainant's request, in writing, stating that there are no records responsive to this request. Further, the Custodian certified in the SOI that no records responsive to this request exist. Conversely, the Complainant asserts in her letter to the GRC dated December 3, 2012 that there should be records responsive because a fence was installed at 184 East Northfield Road and permits are required for installation of fences since 2003.

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. The complainant failed to submit any evidence to refute the custodian's 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. The Complainant's assertion that because permits are required for fence installations is not sufficient, competent credible evidence to establish that such records do, in fact, exist and therefore does not refute the Custodian's certification.

Therefore, because the Custodian certified in the Statement of Information that the records responsive for the first (1st) OPRA request Item No. 2 do not exist, and there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

However, the Custodian also certified in the SOI that upon receipt of the Complainant's Denial of Access Complaint, he followed up with the Police Department to obtain records responsive for the second (2nd) OPRA request Item No. 1. The Custodian provided a copy of an investigation report dated August 19, 2010 along with the SOI. The Custodian certified that although the Complainant's request sought records from 2007, the Police Department changed their computerized document retention system in 2009 and can only retrieve records since 2009. Upon request from the GRC, the Custodian certified on November 20, 2012, in a letter to the GRC that Livingston

Police Captain Marshuetz represented to the Custodian that there are no other records responsive to the second (2nd) OPRA request Item No. 1. The Custodian further certified in that letter dated November 20, 2012 that based on the representations from the Livingston Police Department no other reports responsive exist. Conversely, the Complainant responded via facsimile on December 3, 2012 to the Custodian's November 20, 2012 certification and stated there are additional police reports responsive to her request. In her facsimile dated December 3, 2012 to the GRC she provided copies of three (3) additional police reports, one (1) dated June 9, 2010 and two (2) dated July 21, 2010.

Therefore, the GRC is unable to determine whether there are additional records responsive to the Complainant's second (2nd) request Item No. 1, this complaint should be referred to the Office of Administrative Law for a hearing to resolve said facts. The Office of Administrative Law should also determine if the Custodian knowingly and willfully violated OPRA if found to have unlawfully denied access to the requested records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's first (1st) and second (2nd) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests 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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Because the Complainant's second (2nd) request Item No. 2 fails to seek a specifically identifiable government record and instead asks questions, said request is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). *See also* Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).
3. Because the Custodian certified in the Statement of Information that the records responsive for the first (1st) OPRA request Item No. 2 do not exist, and there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New

Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
N.J.S.A. 47:1A-6.

4. The GRC is unable to determine whether there are additional records responsive to the Complainant's second (2nd) request Item No. 1, this complaint should be referred to the Office of Administrative Law for a hearing to resolve said facts. The Office of Administrative Law should also determine if the Custodian knowingly and willfully violated OPRA if found to have unlawfully denied access to the requested records.

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

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013¹⁹

¹⁹ This decision was originally prepared for the January 29, 2013 meeting; however this case was not adjudicated due to a lack of quorum.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. GRC 09093-13

AGENCY DKT. NO.

GRC Complaint No. 2011-333

MARGARET RIEGER,

Petitioner,

v.

TOWNSHIP OF LIVINGSTON (ESSEX),

Respondent.

Margaret Rieger, petitioner, pro se

Sharon L. Weiner, Esq., for respondent (Murphy McKeon, attorneys)

Record Closed: May 9, 2014

Decided: June 13, 2014

BEFORE **IMRE KARASZEGI, JR.**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 21, 2013, Government Records Council (GRC) Complaint No. 2011-333, Margaret Rieger v. Township of Livingston (Essex), was transmitted to the Office of Administrative Law (OAL) by the GRC, an agency created pursuant to N.J.S.A. 47:1A-7(a) of the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq. The GRC is

authorized to receive, hear, review, and adjudicate complaints filed by any person concerning a denial of access to a government record pursuant to N.J.S.A. 47:1A-7(b).

This matter was transmitted to the OAL for the purpose of additional fact finding as to two issues. First, the GRC noted that it is unable to determine whether there are additional records responsive to the complainant's second request of January 31, 2011, item no. 1, specifically,

All police reports that involved either of the Officer Kelly brothers in relation to 184 East Northfield Road Livingston, N.J. Either officer as the reporting officer, assisting at the scene or the supervising Officer in relation to Anthony Cupo, Christine Robertello, Stepping Forward Counseling Center or the Complainant, from May 2007 through the present.

Second, the GRC is unable to determine if the custodian of records knowingly and willfully violated OPRA if found to have unlawfully denied access to the requested records.

I heard the matter on March 7, 2014, and May 9, 2014, and the record closed on the latter date.

FACTUAL DISCUSSION

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following undisputed **FACTS**:

1. On January 31, 2011, the complainant Margaret Rieger (Rieger) filed her second OPRA request with the custodian of records for the Township of Livingston (Township).
2. Item No. 1 of the January 31, 2011, request seeks, "All police reports that involved either of the Officer Kelly brothers in relation to 184 East Northfield Road, Livingston, NJ, and 190 East Northfield Road, Livingston, NJ. Either officer as the reporting officer, assisting at the scene or the supervising officer in relation to Anthony

Cupo, Christine Robertello, Stepping Forward Counseling Center or the complainant, from May 2007 through the present.”

3. On or about February 9, 2011, custodian sent an email to the Livingston Police Department requesting responsive documents to Rieger’s January 31, 2011, request.

4. The custodian affirmed in a November 20, 2012, certification to the GRC, that an investigation report dated August 19, 2010, was the only document presented to him by the police department, as responsive to Rieger’s January 31, 2011, OPRA request. A second request by the custodian in November 2012 to the police department inquiring about the existence of “any other responsive documents” resulted in the police department reply that “no other responsive documents exist.”

5. Prior to Rieger’s January 31, 2011, OPRA request, the Livingston Police Department converted their manual document-retention system to a computerized program referred to as “Enforsys.” Archived document retrieval utilizing the Enforsys computer software had been limited to reports that were dated after 2009. Archived document dated prior to 2009 could be retrieved manually by police department personnel.

6. Shortly before the scheduled February 7, 2014, OAL hearing, the custodian forwarded additional previously requested documents, dating back to 2007, to Rieger. The additional documents had been retrieved by police department personnel utilizing enhanced-search software recently installed on the police department’s computer system.

Glenn Turtletaub testified on behalf of the Township of Livingston. He has been the Township clerk since 2001. As the Township clerk, he has performed the duties required as the custodian of records. When a document request is presented, Turtletaub would forward the request to the respective municipal department for a response. In this case, Turtletaub forwarded the January 31, 2011, OPRA request to the police department. Turtletaub affirmed that police personnel’s response indicated that no responsive documents existed. He concluded therefore, that document retrieval

from the police department regarding information requested in the January 31, 2011, OPRA request, “couldn’t be done.” Upon receiving this response from police personnel, Turtletaub stated that he did not question department personnel further.

In response to Rieger’s question, Turtletaub acknowledged that as the Township clerk, he would have placed the State-contract purchase order for the police department computer system on the municipal council’s agenda for consideration. However, he added that specifics regarding the capabilities of a particular computer program, purchased on behalf of the Township, would not come to his attention for review and/or comment.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

OPRA is contained in N.J.S.A. 47:1A-1 to -18. As the Legislature declares in the first section of the Act, public policy in this State is that government records shall be readily accessible for inspection, copying, or examination, with certain exceptions for the protection of the public. N.J.S.A. 47:1A-1. Or, as the New Jersey Supreme Court succinctly stated in Mason v. Hoboken, 196 N.J. 51, 65 (2007), “OPRA calls for the prompt disclosure of government records.”

Toward this end, custodians of government records must grant access to them or deny a request for them as soon as possible but no later than seven business days after receiving the request, provided that the records are available and not in storage or archived. N.J.S.A. 47:1A-5(i). Failure to respond shall be deemed a denial. Ibid. If the records are in storage or archived, then custodian must advise within those seven days when they will be made available. Ibid. Failure to make them available by that time shall also be deemed a denial. Ibid.

Consequently, a person who is denied access may file a complaint with the GRC. N.J.S.A. 47:1A-6.

Moreover, a custodian who is found to have knowingly and willfully violated the Act, and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty. N.J.S.A. 47:1A-11.

A knowing and willful violation, however, requires actual knowledge that the actions were wrongful and a positive element of conscious wrongdoing. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 619 (App. Div. 2008) (citing Fielder v. Stinak, 141 N.J. 101, 124 (1995); Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)).

In this case, I **CONCLUDE** that additional records responsive to the complainant's second request (January 31, 2011) as to item no. 1, were finally forwarded to complainant shortly before February 7, 2014, approximately three years from the original OPRA request. This fact is undisputed.

As to the second issue, the GRC was unable to determine if the custodian of records knowingly and willfully violated OPRA, if found to have unlawfully denied access to the requested records. Turtletaub testified that he relied upon department personnel to respond to document requests specific to their departments. Here, Turtletaub relied on various members of the police department to obtain the necessary documents. When those individuals advised Turtletaub that no responsive documents existed, Turtletaub relied on that representation and accordingly, no response was forwarded to complainant.

Turtletaub testified that he was not familiar with any specifics related to the police department's computerized document-retrieval system. He repeated that he relied on police personnel representations that "no other responsive documents exist" and did not question whether any documents were archived and/or manually retrievable. No testimony was presented by police personnel that they advised Turtletaub that the requested documents existed in some form or that such documents could be manually retrieved. Had the record indicated that Turtletaub, as the custodian of records, knew that the requested police documents existed and could be manually searched/retrieved, even if that task was a burdensome one, then, complainant would be able to show a

knowing and willful violation. Absent such evidence, however, I must **CONCLUDE** that Turtletaub did not knowingly and willfully violate OPRA.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the custodian of records, Glenn Turtletaub, not be subject to a civil penalty. I also **ORDER** that the complaint against the Township of Livingston be **DISMISSED**, as there has been no showing that Turtletaub knowingly and willfully violated OPRA or had knowledge of the existence of the requested records in archived form or otherwise.

I hereby **FILE** my Initial Decision with the **GOVERNMENT RECORDS COUNCIL** for consideration.

This recommended decision may be adopted, modified or rejected by the **GOVERNMENT RECORDS COUNCIL**, who by law is authorized to make a final decision in this matter. If the Government Records Council does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE GOVERNMENT RECORDS COUNCIL, 101 South Broad Street, P.O. Box 819, Trenton, New Jersey 08625-0819**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 13, 2014



DATE

IMRE KARASZEGI, JR., ALJ

Date Received at Agency:

6/13/14

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

Margaret Rieger

For Respondent:

Glenn Turtletaub

Timothy Dunmyer

Gary Marshuetz

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

- P-1 Government Records Request Form, dated January 31, 2011
- P-2 Denial of Access Complaint-Records Denied List (3 of 4)
- P-3 Livingston Police Department-Investigation Report (August 19, 2010)

Respondent:

- R-1 Livingston Police Department Operation Report (July 21, 2010-Kelly)
- R-2 Livingston Police Department Operation Report (July 21, 2010-Smith)