



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

April 30, 2013 Government Records Council Meeting

Judith Papiez
Complainant

Complaint No. 2012-55

v.

County of Mercer, Office of County Counsel
Custodian of Record

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the April 23, 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 this complaint be dismissed because the Complainant withdrew her complaint in an e-mail to the GRC dated April 16, 2013. Therefore, no further adjudication is required.

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 30th Day of April, 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: May 2, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 30, 2013 Council Meeting**

**Judith Papiez¹
Complainant**

GRC Complaint No. 2012-55

v.

**County of Mercer, Office of County Counsel²
Custodian of Records**

Records Relevant to Complaint: Electronic copy (via e-mail) of pre-trip logbook, pre-snow inspection report, repair orders to include all T-3869, A-GT38101GT381 forms and itemized parts list for work requested and performed on Mercer County Department of Transportation (“DOT”) trucks No. 8 and No. 9 between June 10, 2006 and January 24, 2012. Also include all “lockout tagouts” and after repair inspection and release forms.

Request Made: February 12, 2012

Response Made: February 15, 2012

GRC Complaint Filed: March 7, 2012³

Background

At its March 22, 2013 public meeting, the Council considered the March 15, 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. Although the Custodian responded in writing to the Complainant’s OPRA request within the statutorily mandated time frame to respond, the Custodian’s written response was insufficient pursuant to N.J.S.A. 47:1A-5(i) and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), because the Custodian failed to provide a date certain upon which she would respond to the Complainant providing any responsive records. *See also* Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011).
2. The Custodian shall allow the Complainant to inspect the responsive logbook and provide her with the estimated cost to receive copies of the logbook for 2010 through 2012.

¹ No legal representation listed on record.

² Sarah G. Crowley, Esq., Custodian of Records. No legal representation listed on record.

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

3. **The Custodian shall, within five (5) business days from receipt of the Council's Interim Order, (a) allow the Complainant to inspect the responsive logbook; and (b) provide the Complainant with an estimate of the proposed costs for making copies of the logbook for the years 2010 through 2012. Should the Complainant accept and pay the estimated cost, the Custodian shall disclose the responsive records within three (3) business days from receipt of same. The Complainant's failure to take any action within the five (5) business day period shall serve as the Complainant's declining to inspect and/or purchase the records and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within eight (8) business days from receipt of the Council's Interim Order the Custodian shall provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director with respect to the Complainant's willingness or refusal to inspect or purchase the requested records.**
4. The Custodian must either disclose all other responsive records or provide a specific lawful basis for denying access to same. If any records do not exist, the Custodian must specifically identify those records and certify that same does not exist.
5. **The Custodian shall comply with item No. 4 above within eight (8) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director.⁶**
6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

On March 25, 2013, the Council distributed its Interim Order to all parties. On April 1, 2013, the Custodian responded to the Council's Interim Order certifying that she sent the Complainant an e-mail advising that the responsive logbooks were available for review. The Custodian certifies that as of this date, the Complainant has not inspected the logbooks. The Custodian certifies that notwithstanding the Complainant's failure to inspect the records, the Custodian is copying the logbook and sending same to the Complainant on this date. The Custodian certifies that she charged the Complainant \$18.65 for paper copies.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁶ Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

On April 16, 2013, the Complainant e-mailed the GRC advising that she wishes to withdraw this complaint because she is satisfied with the Custodian's compliance.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant withdrew her complaint in an e-mail to the GRC dated April 16, 2013. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Senior Case Manager

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

April 23, 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
Commissioner

INTERIM ORDER

March 22, 2013 Government Records Council Meeting

Judith Papiez
Complainant

Complaint No. 2012-55

v.

County of Mercer, Office of County Counsel
Custodian of Record

At the March 22, 2013 public meeting, the Government Records Council (“Council”) considered the March 15, 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. Although the Custodian responded in writing to the Complainant’s OPRA request within statutorily mandated time frame to respond, the Custodian’s written response was insufficient pursuant to N.J.S.A. 47:1A-5(i) and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), because the Custodian failed to provide a date certain upon which she would respond to the Complainant providing any responsive records. *See also* Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011).
2. The Custodian shall allow the Complainant to inspect the responsive logbook and provide her with the estimated cost to receive copies of the logbook for 2010 through 2012.
3. **The Custodian shall, within five (5) business days from receipt of the Council’s Interim Order, (a) allow the Complainant to inspect the responsive logbook; (b) provide the Complainant with an estimate of the proposed costs for making copies of the logbook for the years 2010 through 2012. Should the Complainant accept and pay the estimated cost, the Custodian shall disclose the responsive records within three (3) business days from receipt of same. The Complainant’s failure to take any action within the five (5) business day period shall serve as the Complainant’s declining to inspect and/or purchase the records and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within eight (8) business days from receipt of the Council’s Interim Order the Custodian shall provide certified confirmation of compliance in**



accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director with respect to the Complainant's willingness or refusal to inspect or purchase the requested records.

4. The Custodian must either disclose all other responsive records or provide a specific lawful basis for denying access to same. If any records do not exist, the Custodian must specifically identify those records and certify that same does not exist.
5. **The Custodian shall comply with item No. 4 above within eight (8) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,² to the Executive Director.³**
6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 22nd Day of March, 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: March 25, 2013

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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³ Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 22, 2013 Council Meeting**

**Judith Papiez¹
Complainant**

GRC Complaint No. 2012-55

v.

**County of Mercer, Office of County Counsel²
Custodian of Records**

Records Relevant to Complaint: Electronic copy (via e-mail) of pre-trip logbook, pre-snow inspection report, repair orders to include all T-3869, A-GT38101GT381 forms and itemized parts list for work requested and performed on Mercer County Department of Transportation (“DOT”) trucks No. 8 and No. 9 between June 10, 2006 and January 24, 2012. Also include all “lockout tagouts” and after repair inspection and release forms.

Request Made: February 12, 2012

Response Made: February 15, 2012

GRC Complaint Filed: March 7, 2012³

Background⁴

The Complainant hand-delivered an OPRA request to the County on February 14, 2012. The Custodian responded in writing on February 15, 2012, the first (1st) business day after receipt of the subject request,⁵ stating that additional time would be necessary to retrieve the responsive records. The Complainant e-mailed the County on March 2, 2012 seeking a status update. The Custodian responded on March 19, 2012 stating that because reproduction of the logbooks would require an extraordinary amount of labor and expense, the Complainant may inspect the log books for the specific time period. The Custodian further requested that the Complainant advise whether she wanted to inspect the books or would like an estimated cost.

The Complainant filed her Denial of Access Complaint with the Government Records Council (“GRC”) on March 7, 2012. In said complaint, the Complainant argues that the Custodian violated N.J.S.A. 47:1A-5(i) by failing to provide a date certain on which she would respond to the Complainant.

¹ No legal representation listed on record.

² Sarah G. Crowley, Esq., Custodian of Records. No legal representation listed on record.

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

⁴ The parties may have submitted additional correspondence, or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁵ The Custodian certifies in the Statement of Information that she received the Complainant’s OPRA requests on February 14, 2012.

The Complainant submitted a letter to the GRC on April 23, 2012. In said letter, the Complainant asserts that the Custodian partially complied with the OPRA request by granting inspection or estimating a cost for reproduction. The Complainant states that she wishes to inspect all logs and receive an estimated cost for reproduction of the logs from 2010 to 2012. The Complainant further contends that the Custodian failed to address the remaining records separately maintained by Mercer County Public Works (“MCPW”). The Complainant contends that the Custodian violated N.J.S.A. 47:1A-5(e) by failing to grant immediate access to all responsive records.

The Custodian filed her Statement of Information (“SOI”) on May 25, 2012. In the SOI, the Custodian certifies she received the Complainant’s OPRA request on February 14, 2012. The Custodian certifies she responded on February 15, 2012 stating that she needed an extension of time. The Custodian certifies that she responded again on March 19, 2012 stating that because reproduction of the logbooks would require an extraordinary amount of labor and expense, the Complainant may inspect the logbooks for the specific time period. The Custodian certifies that she requested the Complainant advise, but the Complainant filed this complaint instead. The Custodian certifies that her response still stands and that reproduction of the logbooks will cost in excess of several hundred dollars. Courier Post v, Lenape Regional High School, 360 N.J. Super. 191 (October 28, 2002).

The Complainant e-mailed the GRC on June 2, 2012 requesting that the Custodian arrange for inspection of the logbook.⁶

Analysis⁷

Sufficiency of the Custodian’s Response

OPRA provides that a custodian may have an extension of time to respond to a complainant’s OPRA request, but the custodian must provide a date certain. N.J.S.A. 47:1A-5(i). OPRA further provides that should the custodian fail to provide a response on that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5(i).

In Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), the custodian provided the complainant with a written response to the complainant’s OPRA request on the seventh (7th) business day following receipt of said request. In the response, the custodian requested an extension of time to respond to said request but failed to provide a date certain upon which the requested records would be provided. The Council held that the custodian’s request for an extension of time was inadequate under OPRA pursuant to N.J.S.A. 47:1A-5(i).

Here, the Custodian responded in writing to the Complainant’s OPRA request on the first (1st) business day after receipt of same stating that additional time would be necessary to retrieve

⁶ There is no evidence in the record to support that the Complainant inspected the responsive logbook.

⁷ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

the responsive records. However, the Custodian failed to provide a date certain on which she would respond to the Complainant providing access to any responsive records.

Therefore, although the Custodian responded in writing to the Complainant's OPRA request within statutorily mandated time frame to respond, the Custodian's written response was insufficient pursuant to N.J.S.A. 47:1A-5(i) and Hardwick, supra, because the Custodian failed to provide a date certain upon which she would respond to the Complainant providing any responsive records. *See also* Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011).

Unlawful Denial of Access

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 sought several different records; however, the Custodian's March 19, 2012 response addresses only the logbook and no other records.

Regarding the logbook, the Custodian responded offering inspection or the calculation of an estimated cost to reproduce same if the Complainant so wished. The Complainant filed this complaint and subsequently advised in a letter to the GRC on April 23, 2012 stating that she would like an estimated cost of the logbook for 2010 through 2012 as well as inspection. The Custodian certified in the SOI that although she offered either inspection or an estimated cost, the Complainant filed this complaint instead of advising the Custodian of her preference. However, at the time of the filing of this complaint on March 7, 2012, the Custodian had not yet responded. The Complainant again advised on June 2, 2012 that she wished to inspect the logbook. The evidence of record indicates that the Complainant has not inspected the record nor has the Custodian provided the Complainant with an estimated cost for reproduction.

Regarding the remaining records, the Custodian's response was devoid of any explanation as to whether records existed or were exempt from disclosure under a lawful basis. Thus, the Custodian may have unlawfully denied access to the remaining records.

Therefore, the Custodian shall allow the Complainant to inspect the responsive logbook and provide her with the estimated cost to receive copies of the logbook for 2010 through 2012.

Additionally, the Custodian must either disclose all other responsive records or provide a specific lawful basis for denying access to same. If any records do not exist, the Custodian must specifically identify the records and certify that same does not exist.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian responded in writing to the Complainant's OPRA request within statutorily mandated time frame to respond, the Custodian's written response was insufficient pursuant to N.J.S.A. 47:1A-5(i) and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), because the Custodian failed to provide a date certain upon which she would respond to the Complainant providing any responsive records. *See also* Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011).
2. The Custodian shall allow the Complainant to inspect the responsive logbook and provide her with the estimated cost to receive copies of the logbook for 2010 through 2012.
3. **The Custodian shall, within five (5) business days from receipt of the Council's Interim Order, (a) allow the Complainant to inspect the responsive logbook; (b) provide the Complainant with an estimate of the proposed costs for making copies of the logbook for the years 2010 through 2012. Should the Complainant accept and pay the estimated cost, the Custodian shall disclose the responsive records within three (3) business days from receipt of same. The Complainant's failure to take any action within the five (5) business day period shall serve as the Complainant's declining to inspect and/or purchase the records and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within eight (8) business days from receipt of the Council's Interim Order the Custodian shall provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,⁸ to the Executive Director with respect to the Complainant's willingness or refusal to inspect or purchase the requested records.**
4. The Custodian must either disclose all other responsive records or provide a specific lawful basis for denying access to same. If any records do not exist, the Custodian must specifically identify those records and certify that same does not exist.
5. **The Custodian shall comply with item No. 4 above within eight (8) business days from receipt of the Council's Interim Order with appropriate redactions,**

⁸ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁹ to the Executive Director.¹⁰

6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

March 15, 2013

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¹⁰ Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.