



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

April 29, 2014 Government Records Council Meeting

Ronald Long
Complainant

Complaint No.: 2013-288

v.

Office of the Attorney General
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 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 that the Custodian did not unlawfully deny access to the records responsive to the Complainant’s request because the Custodian certified that the records do not exist at the Division of Law and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. *See Pusterhofer v. NJ Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005).

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 April, 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: May 2, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Ronald Long¹
Complainant**

GRC Complaint No. 2013-288

v.

**Office of the Attorney General²
Custodial Agency**

Records Relevant to Complaint: Copies of all correspondence between the Attorney General's Office and (1) the Court, (2) the Department of Corrections and (3) the N.J. State Parole Board in regards to a pre-sentence investigation report in the matter of State v. Ronald Long, Atlantic Ind. No. 85-04-0519.

Custodian of Record: Robert Sanguinetti
Request Received by Custodian: September 3, 2013
Response Made by Custodian: September 6, 2013
GRC Complaint Received: September 30, 2013

Background³

Request and Response:

On September 3, 2013, the Custodian received an Open Public Records Act ("OPRA") request submitted by the Complainant seeking the above-mentioned records. On September 6, 2013, the third (3rd) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the requested records are denied because the records were not made, maintained, filed or received by the Division of Law.

Denial of Access Complaint:

On September 30, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that the records request was provided to the Custodian on August 29, 2013, and the Custodian denied his request on

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Andrew Sarrol.

³ 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.

September 23, 2013. The Complainant states that the Custodian denied his request because the requested records are not made, maintained, filed or received by the Division of Law.⁴

Statement of Information:

On October 4, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s records request on September 3, 2013 and he responded to the request on September 6, 2013.⁵

The Custodian certifies that after he received the Complainant’s request he searched case tracking under the Complainant’s name and located multiple matters involving the New Jersey Department of Corrections and the New Jersey State Police. The Custodian certifies that he subsequently contacted Section Chief Moratti in order to run a case list for the Complainant. The Custodian certifies that although cases were found by Section Chief Moratti, no cases were found for the matter the Complainant referred to in his OPRA request. The Custodian certifies that he denied the Complainant’s request because no records responsive to the Complainant’s request exist at the Division of Law.

Analysis

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 Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that no records responsive to the Complainant’s request exist at the Division of Law.

Accordingly, the Custodian did not unlawfully deny access to the records responsive to the Complainant’s request because the Custodian certified that the records do not exist at the

⁴ The Complainant asserts that he made “similar” OPRA requests for the same records in the past and he attached to his complaint documents concerning other matters that are not relevant to the instant complaint.

⁵ The Complainant and the Custodian differ in their assertion as to the date the request was received and the date the response was made. The evidence of record reveals that the request was received by the Custodian on September 3, 2013, and that the Custodian responded to the request on September 6, 2013.

Division of Law and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer*, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the records responsive to the Complainant's request because the Custodian certified that the records do not exist at the Division of Law and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer v. NJ Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).

Prepared By: John E. Stewart, Esq.

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

April 22, 2014