



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

June 24, 2014 Government Records Council Meeting

Edgardo Collazo
Complainant

Complaint No. 2013-339

v.

Passaic County Superintendent of Elections
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the June 17, 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 there was no denial of access to the requested election records because the Custodian provided a proper response under OPRA. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Additionally, the Council should decline to order the disclosure of the election records because, as per the Custodian’s initial response and SOI, the records were not in existence at the time of the Complainant’s OPRA request. *See Paff v. City of Union City (Hudson)*, GRC Complaint No. 2012-262 (August 2013); *Pusterhofer v. New Jersey Department of Education*, 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 24th Day of June, 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: June 26, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 24, 2014 Council Meeting**

**Edgardo Collazo¹
Complainant**

GRC Complaint No. 2013-339

v.

**Passaic County Superintendent of Elections²
Custodial Agency**

Records Relevant to Complaint: The county wide election history for the November 5, 2013 general election (“election records”).

Custodian of Record: Sherine El-Abd

Request Received by Custodian: November 18, 2013

Response Made by Custodian: November 21, 2013

GRC Complaint Received: November 25, 2013

Background³

Request and Response:

On November 18, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 21, 2013, three (3) business days later, the Custodian replied seeking an extension of time to respond until January 17, 2014 because “the data is extensive and is still being entered into the data base by our staff.” As such, the Custodian stated, “the records are not complete or available at this time.”

Denial of Access Complaint:

On November 25, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not submit any arguments with his complaint regarding the lawfulness of the alleged denial of access, but he did assent to mediation.

¹ No legal representation listed on record.

² Represented by William Pascrell, III, Esq. and Michael Glovin, Esq. (Paterson, N.J.).

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.

Edgardo Collazo v. Passaic County Superintendent of Elections, GRC 2013-339 – Findings and Recommendations of the Executive Director

Statement of Information:

On May 8, 2014, the Custodian filed a Statement of Information (“SOP”). The Custodian certifies that she received the Complainant’s request on November 18, 2013 and responded on November 21, 2013 seeking an extension of time to respond because the records were not complete or available at that time. The Custodian certifies that on April 1, 2014, following an attempt to mediate the complaint, she advised the Complainant that the requested records were available for pick-up. The Custodian states that the Complainant advised her that he would retrieve the records on April 2, 2014, but that he has failed to retrieve them. The Custodian argues that the Complainant was never denied access to the requested election records and, as such, his complaint is moot.

Additionally, the Custodian states that the records requested by the Complainant had not been generated at the time of the request because it related to “updated, comprehensive[] voter information stemming from the November 5, 2013 general election” that had not yet been reviewed, verified, and entered into the appropriate database.

Analysis

Timeliness & 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.

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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). This time frame applies “provided that the record is currently available and not in storage or archived.” N.J.S.A. 47:1A-5(i). Further, “[t]he requester shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.”

Here, the Custodian responded to the Complainant’s request within seven (7) business days by stating that the desired records did not exist and by requesting an extension of time to respond until January 17, 2014. The Complainant filed his complaint with the GRC on November 25, 2013, four (4) days after receiving the Custodian’s reply. The record indicates, however, that the Complainant and Custodian agreed to mediate the complaint on December 23, 2013. The record also shows that, though no settlement was reached through mediation, the Custodian informed the Complainant on April 1, 2014 that the requested records had been created and could be picked up, and that the Complainant responded that day by stating that he

would retrieve the records on April 2, 2014. Thus, the Custodian provided a valid, timely response to the Complainant pursuant to OPRA. *See* N.J.S.A. 47:1A-5(i). The Custodian then entered into mediation with the Complainant and made the requested records available to him when they had been created. The Complainant, in turn, has not picked up the records.

Therefore, there was no denial of access to the requested election records because the Custodian provided a proper response under OPRA. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Additionally, the Council should decline to order the disclosure of the election records because, as per the Custodian's initial response and SOI, the records were not in existence at the time of the Complainant's OPRA request. *See* Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that there was no denial of access to the requested election records because the Custodian provided a proper response under OPRA. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Additionally, the Council should decline to order the disclosure of the election records because, as per the Custodian's initial response and SOI, the records were not in existence at the time of the Complainant's OPRA request. *See* Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

Prepared By: Robert T. Sharkey, Esq.
Staff Attorney

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

June 17, 2014