



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

September 30, 2014 Government Records Council Meeting

Stuart J. Alterman, Esq.
Complainant

Complaint No. 2013-353

v.

Sussex County Sheriff's Office
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council ("Council") considered the September 23, 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 because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to documents, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Education (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014) As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

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 September, 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: October 3, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 30, 2014 Council Meeting**

**Stuart J. Alterman, Esq.¹
Complainant**

GRC Complaint No. 2013-353

v.

**Sussex County Sheriff's Office²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of:
"Captain George Kately's job status pertaining to all periods of light duty within the past thirty-six (36) months with the Sussex County Sheriff's Office.

Custodian of Record: Lee Liddy

Request Received by Custodian: November 21, 2013

Response Made by Custodian: November 26, 2013

GRC Complaint Received: December 6, 2013

Background³

Request and Response:

On November 21, 2013 the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On November 26, 2013, three (3) business days later, the Custodian responded in writing, via email, stating that George Kately's job status during the past thirty-six (36) months was "Sheriff's Office Captain." The Custodian further stated that providing any additional information would trigger a HIPPA violation.

Denial of Access Complaint:

On December 6, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant, however, failed to provide any argument or support for why he believed he was denied access to the records.

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Statement of Information:

On December 11, 2013, the GRC requested a Statement of Information (“SOI”) from the Custodian, via email. To date, the GRC has not received a response from the Custodian.

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.

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

N.J.A.C. 5:105-2.4(f).

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). On December 11, 2013, the GRC requested a signed completed SOI from the Custodian, to be submitted by no later than December 27, 2013. The Custodian failed to provide an SOI to the GRC, in violation of N.J.A.C. 5:105-2.4(a).

Nonetheless, the Complainant failed to provide any factual or legal basis alleging he was denied access to documents. In Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014), the complainant’s denial of access complaint lacked any arguments or legal precedent in support of his complaint. The Council found that the custodian did not unlawfully deny access to the OPRA request in part because the complainant failed to advance any argument in support of his claim. *See also* Inzelbuch v. Lakewood Bd. of Education (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014).

Here, the Complainant failed to advance any argument in support of his claim for an unlawful denial of access to records. *See* Loigman, GRC No. 2013-242. Nor did the Complainant

identify any documents which he believed the Custodian unlawfully failed to disclose. *See id.* As such, the Complainant failed to state a claim on which the GRC could grant relief.

Notwithstanding the Complainant's failure to state a claim, the GRC notes the Custodian's continued obligation to file an SOI. The GRC also notes that at a minimum, the Custodian could have filed an SOI addressing the Complainant's failure to state a claim.

Therefore, because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to documents, the Complainant failed to state a claim on which the Council could grant relief. *See Loigman*, GRC No. 2013-242; *Inzelbuch*, GRC No. 2013-20; *Collazo*, GRC No. 2013-310. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to documents, the Complainant failed to state a claim on which the Council could grant relief. *See Loigman v. Monmouth Cnty. Prosecutor's Office*, GRC Complaint No. 2013-342 (July 2014); *Inzelbuch v. Lakewood Bd. of Education (Ocean)*, GRC Complaint No. 2013-320 (July 2014); *Collazo v. Passaic Cnty. Superintendent of Elections*, GRC Complaint No. 2013-310 (July 2014) As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

September 23, 2014