



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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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

Michael Toussaint Robinson
Complainant

Complaint No. 2013-361

v.

Atlantic City Police Department (Atlantic)
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 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 the Custodian initially sought clarification and additional details from the Complainant regarding his OPRA request. The Custodian certified that the Complainant could only provide a date of the alleged incident and that it took place at a casino. After conducting a search for complaints and arrest records using said date and the Complainant’s name, the Custodian certified in her SOI that no responsive records existed. Since there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t 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 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**

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

**Michael Toussaint Robinson¹
Complainant**

GRC Complaint No. 2013-361

v.

**Atlantic City Police Department (Atlantic)²
Custodial Agency**

Records Relevant to Complaint: The Complainant stated:

“I am requesting the investigation done by a detective from the Atlantic City Police Department concerning Ku Klux Klan conduct at my former workplace. The conduct were [sic] both civil and criminal against N.J. (LAD) Law Against Discrimination. My former attorney refused to compel all investigative documents and witnesses causing my complaint to be dismissed because of lack of evidence (witnesses) and investigative documents.”

Custodian of Record: Ava Davenport
Request Received by Custodian: October 25, 2013
Response Made by Custodian: October 29, 2013
GRC Complaint Received: December 16, 2013

Background³

Request and Response:

On October 25, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 29, 2013, two (2) business days later, the Custodian responded, in writing, stating that she was unable to locate any documents under the Complainant’s name.

Denial of Access Complaint:

On December 16, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). His complaint did not refer to his OPRA request. Rather, the Complainant stated that on December 6, 2013 he attempted to file a copy of his

¹ No legal representation listed on record.

² Represented by Benjamin Kaufman, Esq. (Atlantic City, NJ).

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.

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OPRA request, which had been denied, with the Atlantic County Superior Court. The Complainant was instructed that although he could a copy of his denied OPRA request, it would not be delivered to the Court Clerk.

Statement of Information:

On February 5, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that upon receiving the OPRA request, she contacted the Complainant by telephone, seeking clarification. The Custodian asked the Complainant when the investigation took place, the name of the assigned detective, the location of the incident, and whether the Complainant or anyone else was arrested. The Custodian further certified that the Complainant provided a date of July 7, 1998, and stated that the incident took place at a casino. The Custodian then told the Complainant that since he provided so little information, she would conduct a search using the Complainant’s name and the date he provided. Finally, the Custodian certified that after conducting a search she did not locate any responsive documents under his name or the date provided.

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. N.J. Dep’t of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian’s certification. The Council subsequently determined that “[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access.” Id.

Here, the Custodian initially sought clarification and additional details from the Complainant regarding his OPRA request. The Custodian certified that the Complainant could only provide a date of the alleged incident and that it took place at a casino. After conducting a search for complaints and arrest records using said date and the Complainant’s name, the Custodian certified in her SOI that no responsive records existed. Since there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer, GRC No. 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find the Custodian initially sought clarification and additional details from the Complainant regarding his OPRA request. The Custodian certified that the Complainant could only provide a date of the alleged incident and that it took place at a casino. After conducting a search for complaints and arrest records using said date and the Complainant's name, the Custodian certified in her SOI that no responsive records existed. Since there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Education, GRC Complaint No. 2005-49 (July 2005).

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

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

July 22, 2014