



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

September 24, 2013 Government Records Council Meeting

Barbara Burns
Complainant

Complaint No. 2013-64

v.

New Jersey Department of State, Division of Elections
Custodian of Record

At the September 24, 2103 public meeting, the Government Records Council (“Council”) considered the September 17, 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 since no denial of access occurred to the records as described in the Denial of Access Complaint (a description that differs from the original OPRA request), this complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e).

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 September, 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: September 26, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 24, 2013 Council Meeting**

**Barbara Burns¹
Complainant**

GRC Complaint No. 2013-64

v.

**New Jersey Department of State, Division of Elections²
Custodial Agency**

Records Relevant to Complaint:

January 23, 2013 OPRA request: Any and all records created by and/or maintained by [Elections], including, but not limited to, voter registration and voter challenge information and correspondence between [the Complainant] and any employee, attorney, representative, elected or appointed officials, and/or agent of the State of New Jersey and its inferior political subdivisions, including, but not limited to, Kim Guadagno, [the Custodian], Patricia Di Constanzo, Teresa M. O'Connor, and the County of Bergen.

Complainant's Denial of Access Complaint: Electronic copies via e-mail of "all records pertaining to [the Complainant] created, maintained, and/or in the custody of the New Jersey State Department of Elections [{"Elections"}] including but not limited to records acknowledged by the Office of the Governor as being in the possession of [Elections]."

Custodian of Record: Robert Giles

Request Received by Custodian: January 23, 2013

Response Made by Custodian: February 1, 2013

GRC Complaint Received: February 27, 2013

Background³

Request and Response:

On January 23, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On February 1, 2013, the Custodian responded in writing seeking additional time until February 22, 2013 to respond. On February 22, 2013, the Custodian responded to the Complainant's OPRA request denying access

¹ No legal representation listed on record.

² Represented by Deputy Attorney General George N. Cohen.

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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to a portion of the Complainant's OPRA request seeking "any and all records ..." and providing eleven (11) records responsive to the portion seeking "... correspondence ..."

Denial of Access Complaint:

On February 27, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts she was denied access to the responsive records in their entirety.

Statement of Information:

On April 16, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the Complainant's OPRA request on January 23, 2012. The Custodian certifies that he responded on February 22, 2013, advising that the portion of the request seeking voter registration and voter challenge information was an invalid request for unspecified records but that the Complainant could obtain general information on Elections' website. The Custodian certifies that he provided the Complainant with all correspondence between herself and the listed public entities and individuals responsive to the other portion of the OPRA request.

The Custodian certifies that the request described in the Denial of Access Complaint for "all records pertaining to the [Complainant] ...," that the Complainant alleges he denied access to, is entirely different from the Complainant's original OPRA request. The Custodian contends that the Complainant improperly expanded her original OPRA request to include records that were not sought; thus, he could not have denied access to same at the time of the OPRA response. The Custodian further asserts that the expanded request fails to identify specific government records and is thus invalid. The Custodian requests that, since the Complainant improperly expanded her original OPRA request in filing this complaint and since the request at issue is invalid, the Council must dismiss this complaint.

Analysis⁴

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 provides that "[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may ... file a complaint with the Government Records Council ..." Id.

⁴ 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.

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Here, the Complainant argued that she was denied access to “all records pertaining to [the Complainant] ...” The GRC notes that the Complainant did not attach a copy of her OPRA request to the Denial of Access Complaint but did attach a copy of the Custodian’s February 22, 2013 response. In the SOI, the Custodian provided the GRC with a copy of the Complainant’s OPRA request and February 22, 2013 response supporting his argument that the Complainant contested a denial of access to records she did not originally request. Therefore, the GRC is satisfied that this complaint is without merit because no denial of access occurred.

Thus, since no denial of access occurred to the records as described in the Denial of Access Complaint (a description that differs from the original OPRA request), this complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that since no denial of access occurred to the records as described in the Denial of Access Complaint (a description that differs from the original OPRA request), this complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e).

Prepared By: Frank F. Caruso
Senior Case Manager

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

September 17, 2013