



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

February 24, 2015 Government Records Council Meeting

Adam Reed
Complainant

Complaint No. 2014-157

v.

Camden County Police Department
Custodian of Record

At the February 24, 2015 public meeting, the Government Records Council (“Council”) considered the February 17, 2015 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:

1. As in Barkley v. NJ Dep’t of Treasury, GRC Complaint No. 2009-128 (May 2010), there is an absence of any evidence indicating the Camden County Police Department staff member who responded to the Complainant’s OPRA request. Consequently, the GRC cannot say who violated N.J.S.A. 47:1A-5(h). See Lombardino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2013-92 (October 2013).
2. Notwithstanding the Custodian’s inability to respond to this request because she never received same, the Custodian did not unlawfully deny access to any requested records. Specifically, the Custodian certified in the Statement of Information that she provided access to all responsive records in her possession once she received the request and there is no competent, credible evidence in the record to refute the Custodian’s certification. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Cole v. Twp. of Montague (Sussex), GRC Complaint No. 2011-236 (December 2012); Valdes v. Twp. of Belleville (Essex), GRC Complaint No. 2012-181 (June 2013).
3. Although an unidentified staff member at the Camden County Police Department violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant’s OPRA request to the Custodian or direct the Complainant to the Custodian, the Custodian did not unlawfully deny access to responsive records that existed. Additionally, the evidence of record does not indicate that the violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the unidentified staff member’s actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.



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 February, 2015

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: February 26, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 24, 2015 Council Meeting**

**Adam Reed¹
Complainant**

GRC Complaint No. 2014-157

v.

**Camden County Police Department²
Custodial Agency**

Records Relevant to Complaint: Copies via United States mail of:

1. Computer generated Dispatch logs from the Camden Police Department pertaining to Case No. 1106220029/0060-11-06, which occurred between June 21-June 22, 2011 at about 11:30 PM to 2:30 AM.
2. Shot spotter video camera footage from 7th Street and Clinton Street pertaining to Case No. 1106220029/0060-11-06 which also occurred between June 21-June 22, 2011 at about 11:30 PM to 2:30 AM.

Custodian of Record: Maria Efstratiades³
Request Received by Custodian: December 19, 2013
Response Made by Custodian: December 31, 2013
GRC Complaint Received: April 1, 2014

Background⁴

Request and Response:

On December 19, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The request was made on the State of New Jersey Department of Corrections “Government Records Request Form.” On December 31, 2013, seven (7) business days later, a representative of the Camden County Police Department (“CCPD”) responded, in writing, to the Complainant advising him that his request “must be submitted and authorized through our Municipal Prosecutor’s Office.”

¹ No legal representation listed on record.

² Represented by Howard Goldberg, Esq. (Camden, NJ).

³ Custodian for Camden County.

⁴ 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.

Denial of Access Complaint:

On April 1, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that he submitted an OPRA request to the CCPD on December 19, 2013. The Complainant claimed that his request was denied with no explanation other than the request had to be sent to, and response authorized by, the Municipal Prosecutor’s office.

Statement of Information:

On May 21, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Complainant’s December 9, 2013 request was received by the CCPD Records and Identification Bureau. The Custodian stated further that the CCPD did not recognize the form as an OPRA request⁵ but rather as a request for discovery. As such, the Custodian claimed she never received the request. Rather the CCPD referred the Complainant to the Municipal Prosecutor to seek clearance for the requested records. The Custodian explained that the records sought could not be released by the CCPD to the Complainant without prior approval from the Municipal Prosecutor.

Notwithstanding the above, the Custodian stated that in order “to accommodate” the Complainant’s request, she provided the CAD tickets for incident 1106220029 and the CAD Ticket Event No. 1106220029. As for the video footage requested, the Custodian stated that no record exists.

Additional Information:

On December 31, 2014, the GRC submitted a request for additional information from Michael Daniels (“Mr. Daniels”) the Public Information Officer of the CCPD and asked the following:

1. Have you previously responded to an OPRA request from an inmate? If so, please describe the form the inmate used?
2. Is the request attached to the Complainant’s Denial of Access Complaint (see enclosed) [the Government Records Request Form] the document you received from the complainant and treated as a normal discovery request?

Mr. Daniels certified that the copy of the “Government Records Request Form” was the document received by the CCPD’s Records and Information Bureau. Mr. Daniels further certified that the request was treated as a discovery request and not a request for records under OPRA.⁶

⁵ The form states on top: “The reverse side of this form contains important information concerning government records...In addition, please note that you may complete and submit requests electronically on the internet at www.nj.gov/opra.”

⁶ Mr. Daniels further certified that, “...I have now advised the personnel from the Records Bureau that forms such as this one that are received in the future should be considered OPRA requests and forwarded to Ms. Efsradiates.”

Analysis

Failure to Forward Request

OPRA provides that “[a]ny officer or *employee* of a *public agency* who receives a request for access to a government record *shall forward* the request to the *custodian of the record* or *direct the requestor* to the *custodian of the record*.” N.J.S.A. 47:1A-5(h) (emphasis added). In Lombardino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2013-92 (October 2013), the complainant submitted an OPRA request using the Borough of Ho-Ho-Kus’s official request form. The recipient of the request believed the request to be for discovery and forwarded the request to the municipal prosecutor instead of the OPRA custodian. The Council found that the recipient violated N.J.S.A. 47:1A-5(h) for failing to forward the OPRA request to the custodian or direct the complainant to the custodian.

OPRA further provides that:

[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following:

- (1) specific directions and procedures for requesting a record;
- (2) a statement as to whether prepayment of fees or a deposit is required;
- (3) the time period within which the public agency is required by [OPRA], to make the record available;
- (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- (5) space for the custodian to list reasons if a request is denied in whole or in part;
- (6) space for the requestor to sign and date the form;
- (7) space for the custodian to sign and date the form if the request is fulfilled or denied.

N.J.S.A. 47:1A-5(f).

In the instant matter, the CCPD Records and Identification Bureau responded to the Complainant’s request seven (7) business days later, advising the Complainant to submit his request to the Municipal Prosecutor’s Office. The Custodian certified that she never received the Complainant’s request since it was treated as a request for discovery, *vis a vis* a request under OPRA.

A review of the Complainant’s request reveals that the form used by the Complainant meets the criteria set forth in N.J.S.A. 47:1A-5(f), and is substantially similar to the GRC’s

model request form. Moreover, the form directs requestors to the website “www.nj.gov/opra” (emphasis added) if they wish to submit a records request electronically. Thus, the evidence in the record demonstrates that the Complainant’s request was made pursuant to OPRA and should have been treated as such, rather than a discovery request. However, the evidence in the record does not identify the staff member of the CCPD responsible for responding to the Complainant’s request.

In Barkley v. NJ Dep’t of Treasury, GRC Complaint No. 2009-128 (May 2010), the agency was unable to identify the staff member who responded to the complainant’s letter request. As such, the Council was unable to identify the individual who violated N.J.S.A. 47:1A-5(h). Barkley, GRC No.2009-128.

Here, as in Barkley there is an absence of any evidence indicating the CCPD staff member who responded to the Complainant’s OPRA request. Consequently, the GRC cannot say who violated N.J.S.A. 47:1A-5(h). See Lombardino, GRC No. 2013-92.

Unlawful Denial of Access

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁷ Thus, 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).

The Council has previously found that, in light of a custodian’s certification that no records responsive to the request exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Similarly, the Council has found no unlawful denial of access when a custodian certified that he provided all responsive records to complainant, and there existed no credible evidence in record to refute such certification. See Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).

Here, in the SOI, the Custodian first certified that she did not receive the Complainant’s OPRA request until after the filing of this complaint. Further, the Custodian argued that the Complainant’s December 19, 2013 request sought Discovery records and was not a proper OPRA request. However, to “accommodate” the Complainant, the Custodian released CAD tickets for incident 1106220029 and the CAD Ticket Event No. 1106220029. As for the video footage requested, the Custodian stated that no record exists. There is no evidence in the record

⁷ A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

to refute the Custodian's certification that she attached all responsive documents to the Complainant's OPRA request.

Therefore, notwithstanding the Custodian's inability to respond to this request because she never received same, the Custodian did not unlawfully deny access to any requested records. Specifically, the Custodian certified in the SOI that she provided access to all responsive records in her possession once she received the request and there is no competent, credible evidence in the record to refute the Custodian's certification. Burns, GRC No. 2005-68; Cole v. Twp. of Montague (Sussex), GRC Complaint No. 2011-236 (December 2012); Valdes v. Twp. of Belleville (Essex), GRC Complaint No. 2012-181 (June 2013).

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty[.]” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA.]” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, although an unidentified staff member at the CCPD violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's OPRA request to the Custodian or direct the Complainant to the Custodian, the Custodian did not unlawfully deny access to the responsive records that existed. Additionally, the evidence of record does not indicate that the violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the unidentified staff member's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. As in Barkley v. NJ Dep't of Treasury, GRC Complaint No. 2009-128 (May 2010), there is an absence of any evidence indicating the Camden County Police Department staff member who responded to the Complainant's OPRA request. Consequently, the GRC cannot say who violated N.J.S.A. 47:1A-5(h). See Lombardino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2013-92 (October 2013).
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Prepared By: Ernest Bongiovanni
Staff Attorney

Approved By: Dawn R. SanFilippo
Deputy Executive Director

February 17, 2015