



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 30, 2015 Government Records Council Meeting

Jeffrey C. Frett
Complainant

Complaint No. 2014-163

v.

Camden County
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 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 the Custodian has borne her burden of proving that she lawfully denied access to the records requested. N.J.S.A. 47:1A-6. The Custodian stated both in her SOI and her subsequent certification that the custodial agency searched its files and found no records connected to the incident number provided by the Complainant. While the Complainant later advised that he gave statements to the CCPD and CCIA, he provides no competent, credible evidence to refute the Custodian’s certifications. *See Valdez v. Union City Bd. of Educ. (Union)*, GRC Complaint No. 2011-50 (August 2012); *Pusterhofer v. N.J. Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005). Furthermore, the original OPRA request did not identify or request any such statements. *Burns v N.J. Dep’t of State, Div. of Elections*, GRC Complaint No. 2013-64 (September 2013).

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 June, 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: July 2, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2015 Council Meeting**

**Jeffrey C. Frett¹
Complainant**

GRC Complaint No. 2014-163

v.

**Camden County²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. “Camden Police Incident report that was generated in regards to incident number 10-1130-0906”;
2. “Case Disposition report (maybe known as Detective Case Disposition or Summary Report) as it relates to Camden Police incident number 10-11-30-0906”;
- and,
3. “Camden Police Evidence Report as it relates to Camden Police incident #10-1130-0906.”

Custodian of Record: Maria Efstratiades
Request Received by Custodian: March 20, 2014
Response Made by Custodian: March 31, 2014
GRC Complaint Received: April 7, 2014

Background³

Request and Response:

On March 20, 2014, the Complainant submitted three Open Public Records Act (“OPRA”) requests seeking the above mentioned records. On March 31, 2014, the seventh (7th) business day following the receipt of the requests, the Custodian responded in writing to state that, with respect to all three requests, “no records exist for the case number cited.”

Denial of Access Complaint:

On April 7, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). He listed the March 2014 requests, claiming that the

¹ No legal representation listed on record.

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

Custodian unlawfully denied access to the records.⁴ To support his argument, the Complainant asserted that he initiated the incident cited in his requests and thus has personal knowledge of the facts. Specifically, he stated that he was interviewed regarding the incident and gave statements to the Camden County Prosecutor's Office ("CCPO") and the Camden Police Internal Affairs ("CPIA") division. The Complainant further stated that as part of the incident, he turned in a handgun and gave it to a detective. He further asserted that, as a former police officer of seventeen (17) years, he is aware that all such incidents are assigned a case number. The Complainant stated that an Incident Report, an evidence report, and a detective's summary report would have been filed.

Statement of Information:

On April 29, 2014, the Custodian filed a Statement of Information ("SOI"). She certified that the Complainant's OPRA requests were received on March 20, 2014. The Custodian further certified that for each item described by the Complainant, the Camden County Police Department ("CCPD") conducted a search based on the incident number provided. On March 31, 2014, following the search, the CCPD advised the Custodian that "for these three requests, no records exist for the case number cited." On that same date, the Custodian responded in writing to the Complainant to advise him that no responsive records exist. The Custodian also stated that the Complainant, by mentioning in his Denial of Access Complaint that he provided a statement to the Prosecutor's Office and the CPIA, provided additional information that was not included as part of the original OPRA request. The Custodian stated that she advised the Complainant that records originating with the Prosecutor's Office must be requested directly from the Prosecutor's Office. Furthermore, she advised that statements given to the Internal Affairs Unit are confidential pursuant to Attorney General Guidelines and that such statements are only subject to disclosure under limited circumstances, citing Executive Order No. 69 (Whitman, 1997).

Additional Submissions:

On March 18, 2015, the GRC sought clarification from the Complainant regarding his assertion that he had provided statements to the Camden County Prosecutor's Office and Camden Police Internal Affairs in 2011. Specifically, the GRC asked the Complainant:

1. Do you claim that the aforesaid statement was part of any of those three enumerated reports, or was it additional to those reports?
2. Did your summary intend to mean that the statement you gave to the Camden County Prosecutor's Office and the Camden Police Internal Affairs Unit in January 2011 were two separate statements or a single statement (in other words given to those two departments simultaneously or separately)?
3. Do you have a copy of the aforesaid statement or statements?
4. If your answer is affirmative to the previous question, please provide a copy of the statement(s) to the GRC.

⁴ In his narrative, the Complainant noted that he previously requested the same records in October 2013 and was similarly denied at that time. The timeliness of that response is not at issue.

The GRC requested a certified response from the Complainant, pursuant to New Jersey Court Rules 1969 R. 1:4-4, within ten (10) business days. By the tenth business day, April 1, 2015, the Complainant had not responded. On its own initiative, the GRC wrote to the Complainant again, this time extending the response deadline to April 8, 2015. However, the Complainant again failed to respond and has still not responded as of this date.

On April 24, 2015, the GRC sought additional information from the Custodian. On April 29, 2015, the Custodian certified in writing to the GRC that, although the Complainant now reports that he provided a statement to the Camden County Prosecutor's Office and Camden Police Internal Affairs, his original OPRA requests did not include a demand for those records. The Custodian certified that since those statements were not part of the Complainant's original OPRA requests, her comments in the SOI were not intended as a response to those records. Rather, the Custodian thought it prudent to note that records maintained by the Prosecutor's office must be requested from that office and that police internal affairs records are confidential. She reaffirmed that the CCPD did not locate any response records.

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. Further, 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.

In Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed, and the complainant submitted no competent, credible evidence to refute the custodian's certification. The GRC determined that, because the custodian certified that no records responsive to the request existed and there was no evidence in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

In Valdez v. Union City Bd. of Educ. (Union), GRC Complaint No. 2011-50 (August 2012), the complainant sought news releases pertaining to meetings held by the Union City Board of Education. The custodian certified that he and another staffer conducted a search of their files and meeting minutes to locate relevant news releases. Following the search, the custodian certified that he could not locate any responsive documents. The Council found that the custodian's certification was sufficient to show that he performed an adequate search for the requested records.

In the instant matter, the Custodian certified in her SOI that, despite a search, the CCPD could not locate any Incident Report connected to the case number provided by the Complainant.

In contrast, the Complainant argued that he knows such reports do exist⁵ because of his personal involvement in the incident and his years of experience as a police officer. In his Denial of Access Complaint, he referenced statements which he claims to have made to the CCPO and the CPIA in 2011. With respect to those statements, the GRC twice requested clarification from the Complainant, but the Complainant flatly failed to respond. The GRC later requested clarification from the Custodian to ensure that the statements made by the Complainant to the Prosecutor's Office and the Internal Affairs unit were not part of the Incident Reports described in his OPRA requests. Accordingly, on April 29, 2015, the Custodian submitted a certification to reaffirm that the agency conducted an adequate search and found no responsive records.

Based on the available record, the GRC finds that the Custodian has borne her burden of proof that she lawfully denied access to the requested records N.J.S.A. 47:1A-6. The Custodian stated in both her SOI and her subsequent certification that no records described under the listed incident number could be located following a comprehensive search. While the Complainant contends that he gave statements to the CCPD and CCIA, he has offered no competent, credible evidence to refute the Custodian's certifications. See Valdez, GRC No. 2011-50; Pusterhofer, GRC No. 2005-49. Further, although the Complainant referenced statements that he purportedly gave to the CCPD and the CCIA, his original OPRA requests did not identify, specify, or describe any such statements. Instead, he only sought the Incident Report generated as a result of incident #10-1130-9606 and the disposition and evidence reports corresponding to that incident. There is no denial of access when a Complainant seeks records in his Denial of Access Complaint that he did not seek in his original OPRA request. Burns v N.J. Dep't of State, Div. of Elections, GRC Complaint No. 2013-64 (September 2013).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proving that she lawfully denied access to the records requested. N.J.S.A. 47:1A-6. The Custodian stated both in her SOI and her subsequent certification that the custodial agency searched its files and found no records connected to the incident number provided by the Complainant. While the Complainant later advised that he gave statements to the CCPD and CCIA, he provides no competent, credible evidence to refute the Custodian's certifications. See Valdez v. Union City Bd. of Educ. (Union), GRC Complaint No. 2011-50 (August 2012); Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Furthermore, the original OPRA request did not identify or request any such statements. Burns v N.J. Dep't of State, Div. of Elections, GRC Complaint No. 2013-64 (September 2013).

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph Glover
Executive Director

June 23, 2015

⁵ Police Incident Reports and related documents that summarize information contained in such reports are, in any event, criminal investigatory records exempt from disclosure under OPRA. See N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; and Cheatham v. Borough of Fanwood Police Dep't (Union), GRC Complaint No. 2013-262 (July 2014). See also Feggans v. City of Newark (Essex), GRC Complaint No. 2207-238 (October 2008).