



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

December 16, 2014 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2014-191

v.

Toms River Police Department (Ocean)
Custodian of Record

At the December 16, 2014 public meeting, the Government Records Council ("Council") considered the December 9, 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 has borne his burden of proof that he lawfully denied access to the requested reports because he certified, and the record reflects, that no responsive documents exist. N.J.S.A. 47:1A-6; See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). The Council need not address the Custodian's additional arguments because he conducted a search and no responsive documents to the request exist.

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 16th Day of December, 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: December 17, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 16, 2014 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2014-191

v.

**Toms River Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: “Wawa Report, RiteAid Report, Walgreens Report involving me.”

Custodian of Record: J. Mark Mutter

Request Received by Custodian: April 29, 2014

Response Made by Custodian: April 30, 2014

GRC Complaint Received: May 9, 2014

Background³

Request and Response:

On April 29, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 30, 2014, the Custodian responded, in writing, stating that the Complainant’s request was invalid for its lack of specificity and date range. However, the Custodian stated that a search using only the Complainant’s name produced records of incidents that did not involve the establishments the Complainant identified. The Custodian released one of the records to the Complainant and denied access to the remainder as criminal investigatory records. N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On May 9, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on April 28, 2014, he was told by a “CVS” regional manager that he was banned from patronizing the local “Walgreens” and “Rite Aid.” That same day, the Complainant called the Toms River Police

¹ No legal representation listed on record.

² Represented by Anthony Merlino, Esq. (Toms River, 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.

Department (“TRPD”), and was informed by a “Lt. Belcher” that he was banned from patronizing the local “7-11” and “WaWa” convenience stores.

After reaching out to managers from both Walgreens and Rite Aid, the Complainant was told that he was not banned from patronizing either establishment. The Complainant argued that he should have the right to know why he was banned from these establishments, according to the TRPD.

Statement of Information:

On May 27, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian argued that the Complainant’s request was “facially deficient” because it failed to specifically identify the government records sought. *See* MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). Notwithstanding the request’s lack of specificity, the Custodian certified that he conducted a search for records using only the Complainant’s name as a reference. The Custodian certified that the search yielded no responsive 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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. *See* Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Custodian certified that, notwithstanding his challenge against the OPRA request’s validity, he conducted a search for records using the Complainant’s name. The Custodian certified that no records exist involving the Complainant and any of the establishments identified in his request. Additionally, the Complainant failed to provide any evidence to rebut the Custodian’s certification.

The Custodian has borne his burden of proof that he lawfully denied access to the requested reports because he certified, and the record reflects, that no responsive documents exist. N.J.S.A. 47:1A-6; *See* Pusterhofer, GRC No. 2005-49. The Council need not address the Custodian’s additional arguments because he conducted a search and no responsive documents to the request exist.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the requested reports because he certified,

and the record reflects, that no responsive documents exist. N.J.S.A. 47:1A-6; See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). The Council need not address the Custodian's additional arguments because he conducted a search and no responsive documents to the request exist.

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

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

December 9, 2014