



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

September 29, 2015 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2014-232

v.

NJ Motor Vehicle Commission
Custodian of Record

At the September 29, 2015 public meeting, the Government Records Council (“Council”) considered the September 22, 2015 Supplemental 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 Council dismiss the complaint because the Complainant withdrew the complaint in writing to the GRC on August 23, 2015. Therefore, no further adjudication is required.

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 September, 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: October 5, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 29, 2015 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2014-232

v.

**New Jersey Motor Vehicle Commission²
Custodial Agency**

Records Relevant to Complaint: “Public employee info - [r]edacted”

Custodian of Record: Joseph F. Bruno
Request Received by Custodian: Unknown
Response Made by Custodian: March 28, 2014
GRC Complaint Received: June 10, 2014

Background

July 28, 2015 Council Meeting:

At its July 28, 2015, public meeting, the Government Records Council (“Council”) considered the July 21, 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, found that based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian responded to the request in a timely manner and/or unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination, if applicable, of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On July 29, 2015, the Council distributed its July 28, 2015, Interim Order to all parties. On August 12, 2015, the tenth (10th) business day following receipt of the Council’s Order, the Custodian’s Counsel filed with the GRC a request for reconsideration of said Order, citing mistake, new evidence, and change of circumstances. On August 12, 2015, the same business day the request for reconsideration was received by the Complainant, the Complainant filed with

¹ No legal representation listed on record.

² Represented by Valentina M. DiPippo, Deputy Attorney General.

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the GRC an objection to the request for reconsideration. Thereafter, on August 23, 2015, the Complainant withdrew the complaint in writing to the GRC.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council dismiss the complaint because the Complainant withdrew the complaint in writing to the GRC on August 23, 2015. Therefore, no further adjudication is required.

Prepared By: John E. Stewart

Reviewed By: Joseph Glover
Executive Director

September 22, 2015



State of New Jersey
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PO BOX 819
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

July 28, 2015 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2014-232

v.

NJ Motor Vehicle Commission
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 21, 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 based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian responded to the request in a timely manner and/or unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination, if applicable, of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 28th Day of July, 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 29, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 28, 2015 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2014-232

v.

**New Jersey Motor Vehicle Commission²
Custodial Agency**

Records Relevant to Complaint: “Public employee info - [r]edacted”

Custodian of Record: Joseph F. Bruno
Request Received by Custodian: Unknown
Response Made by Custodian: March 28, 2014
GRC Complaint Received: June 10, 2014

Background³

Request and Response:

The Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking personnel file information and résumés for the Egg Harbor Township New Jersey Motor Vehicle Commission (“MVC”) employees. On March 28, 2014, the Custodian responded in writing, informing the Complainant that he received the Complainant’s OPRA request on March 28, 2014, and required an extension of time until April 4, 2014.⁴ On April 4, 2014, the Custodian wrote to the Complainant again, informing him that he received the request on March 28, 2014, and is disclosing all available record information responsive to the request. The Custodian also informed the Complainant that “...personal information of the individuals identified in your request has been redacted in accordance with ‘reasonable expectation of privacy’ provision of the OPRA...last names of the...employees have also been redacted. The MVC does not disclose the full names of the employees stationed at the MVC’s field locations in the interest of the safety those individuals” (sic).

¹ No legal representation listed on record.

² Represented by Valentina M. DiPippo, Deputy Attorney General.

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.

⁴ Because the period from March 28, 2014, to April 4, 2014, is only five (5) business days, the Custodian may have requested the extension of time because the Complainant sought immediate access records (*i.e.*, salary information); however, the Custodian failed to make that clear in his response, and the GRC cannot make such an assumption.

Denial of Access Complaint:

On June 10, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the request was provided to the Custodian on March 28, 2014, and the Custodian denied the request on April 4, 2014. The Complainant then states in the narrative of his complaint that he submitted the request to the Custodian on March 14, 2014, for résumés of employees at the Egg Harbor Township MVC location. The Complainant states that he also requested names, titles, salary, and length of service for the same employees pursuant to N.J.S.A. 47:1A-10(a).

The Complainant states that he received documents from the Custodian in response to his request, which were heavily redacted without sufficient explanation and no document index. The Complainant asserts that OPRA requires custodians to state the specific basis for each suppression. The Complainant cites to Courier News v. Hunterdon Cnty. Prosecutor’s Office, 358 N.J. Super. 373 (App. Div. 2003) and Paff v. NJ Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (2005), and Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) in support of his assertion. The Complainant contends that “MVC use of reasonable expectation of privacy for public employees as a blanket exemption is not valid nor is it supported by any facet of the law.” The Complainant states the following records were denied: “Public employee info - [r]edacted.”

The Complainant states that the MVC attempts to justify withholding employee information due to employee safety. According to the Complainant, his past research reveals that at thirty (30) MVC locations over a five year period, two MVC employees made threats, and two citizens made threats, which the Complainant contends is hardly sufficient justification for withholding public information. The Complainant concludes that the MVC’s denial of his request “...is nothing more than a growing trend by government bureaucrats who have lost the spirit of public service and feel they are no longer accountable to the people.”

The Complainant failed to attach a copy of the OPRA records request filed with the agency, as required per paragraph 5 of the Denial of Access Complaint. The Complainant did attach a copy of the MVC’s request receipt indicating the date of request as March 19, 2014, and containing a transcription of the request, which appears as follows:

“Pursuant to NJSA 47:1A-10a names, job titles, salary, and length of service for all MVC employees at the Egg Harbor Township location. You may omit employee Kathleen Steiger from this request as her info was already provided on 2/12/14. Pursuant to McGreevey executive order 26 all resumes on file for 2014 MVC employees at the Egg Harbor Township location. You may omit employee Kathleen Steiger from this request as her info was already provided on 2/12/14.”

The Complainant also attached to his complaint as “Exhibit A” one hundred eighty-two (182) pages of documents, one hundred fifty-three (153) of which contain redactions.

Statement of Information:

On July 21, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on March 19, 2014, and responded in writing on April 4, 2014. The Custodian further certifies that the records responsive to the request are “[n]ames, job titles, salary and length of service for all MVC employees at the Egg Harbor Township location. All resumes on file for 2014 MVC employees at the Egg Harbor Township location.” The Custodian states that “[r]edactions were made to delete last names, social security number (sic), date of birth of MVC employees and the identities and personal information of contacts used by the employees on their resumes.”

The Custodian failed to attach a copy of the OPRA records request as required in Item 6 of the SOI; however, he did attach a copy of the MVC’s request receipt indicating the date of request as March 19, 2014. On page 2 of the receipt, however, the Custodian states that he is in receipt of the Complainant’s request dated March 28, 2014. The receipt contains a transcription of the Complainant’s request.

The Custodian’s Counsel submitted a legal argument wherein she states that the Complainant submitted his OPRA request on March 19, 2014, and that on March 28, 2014 the Custodian requested an extension of time until April 4, 2014, at which time he did respond to the request.

Counsel asserts that the New Jersey Supreme Court in Kovalcik v. Somerset Cnty. Pros. Office, 206 N.J. 581, 594 (2011) stated that the OPRA exemption for personnel records “begins with a presumption of non-disclosure and proceeds with a few narrow exceptions.” Counsel further states that citizens, including public employees, have a reasonable expectation of privacy, and agencies are obligated to protect their employees’ information where disclosure would violate the citizen’s reasonable expectation of privacy. N.J.S.A. 47:1A-1. Therefore, Counsel argues that the Custodian acted appropriately in consideration of its employees’ reasonable expectation of privacy when it provided the Complainant with redacted copies of résumés and records containing names, job titles, salary, and length of service for the MVC employees in Egg Harbor Township.

Counsel further argues that the MVC is required to redact unlisted phone numbers pursuant to N.J.S.A. 47:1A-5(a), and that the GRC in Wolosky v. Twp. of Parsippany-Troy Hills (Morris), GRC Complaint No. 2010-317 (March 2012), recognized that a custodian does not have a duty to determine whether a telephone number is listed or unlisted. Counsel points out that in Vargas (on behalf of The Philadelphia Inquirer) v. NJ Dep’t of Educ., GRC Complaint No. 2012-126 (April 2013), the Council held that the home addresses of employees may be redacted to comport with the employees’ reasonable expectation of privacy.

Counsel states that the MVC is concerned that providing the full name and location of its field agency employees presents a risk to their personal safety; therefore, any interest the Complainant may have in the full names of agency employees is outweighed by the agency’s security concerns. Counsel attached to her legal argument a certification, dated March 18, 2014, submitted by Robert Grill, the MVC Director of Agency Services-South. Mr. Grill avers that

employees at the MVC's field agencies have received threats from customers and that in some instances, field agency security or police officers have been required to address issues that arose at field agencies. Mr. Grill further avers that due to concerns regarding the personal safety of its employees, the MVC does not provide the full name of employees at its field locations. Counsel argues that the fact that the Complainant claims to have conducted his own investigation regarding the safety and security of MVC employees is of no moment.

Analysis

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 this complaint, the GRC is unable to determine when the OPRA request was received by the Custodian. The Custodian wrote to the Complainant, informing him that he received the request on March 28, 2014; however in the SOI the Custodian certified that he received the request on March 19, 2014, a difference of seven (7) business days. The Custodian's Counsel stated that the Complainant submitted his OPRA request to the Custodian on March 19, 2014, and that on March 28, 2014, the Custodian requested an extension of time until April 4, 2014. The Complainant asserts that the request was provided to the Custodian on March 28, 2014. However, the Complainant then states in the narrative of his complaint that he submitted the request to the Custodian on March 14, 2014. A copy of the request was not attached to either the complaint or the SOI. Because immediate access records are sought in this matter, timeliness is an important issue.

The Complainant alleges the Custodian failed to submit a document/redaction index with the disclosed records. In fact, there is nothing in the evidence of record to indicate the Custodian did submit one. Even in the SOI, the Custodian failed to list the records, including the number of pages for each record as **required** (emphasis in the SOI form). On the other side, the Complainant provided no help to the GRC either. He listed the records denied as simply "Public employee info - [r]edacted," then attached to his complaint one hundred fifty-three (153) pages containing redacted material.⁵ The Complainant did not provide the GRC with any guidance as to what specific redactions were alleged to be unlawful; he just left it for the GRC to sort out.

Therefore, based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian responded to the request in a timely manner and/or unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination, if applicable, of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

⁵ A review of the attached documents revealed that many of the redactions were clearly lawful because a specific OPRA provision provided for an exemption (*e.g.*, social security numbers and telephone numbers).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian responded to the request in a timely manner and/or unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for a determination, if applicable, of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015