



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

September 29, 2015 Government Records Council Meeting

Robert Green
Complainant

Complaint No. 2014-258

v.

Township of Vernon (Sussex)
Custodian of Record

At the September 29, 2015 public meeting, the Government Records Council (“Council”) considered the September 22, 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 it dismiss the complaint, finding that the Complainant’s Denial of Access Complaint lacks any factual or legal basis alleging he was denied access to documents and that the Complainant failed to state a claim on which the Council could grant relief. N.J.S.A. 47:1A-6. See also Loigman v Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Alterman v. Sussex Cnty. Sherriff’s Office, GRC Complaint No. 2013-353 (September 2014); Murphy v. Borough of Atlantic Highlands, GRC Complaint No. 2014-76 (October 2014).

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**

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

**Robert Green¹
Complainant**

GRC Complaint No. 2014-258

v.

**Township of Vernon (Sussex)²
Custodial Agency**

Records Relevant to Complaint:

1. “Copy of Town Council Mtg. dated 5-29-14 CD Form”;
2. “Copy of Resume and cover letter for Clerk L[Lauren E.] Kirkman”; and,
3. “Copy of ‘signed’ Ordinance that changed the form of Government in Vernon Twp. in 2011 Ord. #11-21 [emphasis in original].”

Custodian of Record: Lauren E. Kirkman

Request Received by Custodian: May 30, 2014

Response Made by Custodian: June 5, 2014

GRC Complaint Received: July 15, 2014

Background³

Request and Response:

On May 30, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above listed records. Although the Complainant signed the OPRA request as “Anonymous,” he nevertheless delivered the request personally to the Township Clerk’s office and wrote that he would pick up the documents in seven (7) business days. On June 11, 2014, the Complainant returned to the Township Clerk’s Office and received the records. To accompany the requested documents, the Custodian signed a letter, dated June 5, 2014, that addressed the Complainant by name. In that letter, the Custodian explained that she had redacted an unlisted telephone number, a home address, and a personal e-mail address. To justify the redactions, the Custodian’s letter cited various statutory exemptions. In addition, the Custodian

¹ No legal representation listed on record.

² Represented by John Ursin, Esq. and Robert McBriar, Esq., Schneck, Price, Smith, and King (Florham Park, 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.

assessed the Complainant a fee of \$2.84, which covered the cost of the CD and paper copies of the ordinance, the résumé, and the résumé's cover letter.⁴

Denial of Access Complaint:

On July 15, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). According to the Complainant, he filed the OPRA request in person at the Custodian's office on May 30, 2014, and advised the Custodian that he would pick up the documents in seven business days. The Complainant stated that he signed his request "Anonymous," yet when he picked up the records, the Custodian addressed him by name in her letter. The Complainant alleged that the Custodian deliberately sought out his name, further commented that he found the Custodian to be rude, and stated that "this woman was totally unprofessional in performing her duties." The Complainant additionally asserted that the Custodian's redactions are "not allowable by GRC guidelines."

Statement of Information:

On August 8, 2014, the Custodian filed a Statement of Information ("SOI"). According to the Custodian, the Complainant personally delivered the OPRA request to the Township Clerk's Office on May 30, 2014. He then indicated that he would return in seven business days to collect the requested documents. The Custodian certified that she responded to the request on June 5, 2014, four (4) business days following receipt of the request, by leaving a copy of the documents available for pick up at the Clerk's Office. According to the Custodian, the municipal attorney advised her to redact her unlisted telephone number, her home address, and her personal e-mail address, citing N.J.S.A. 47:1A-1.1 and Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009). To cite the statutory basis for each redaction, the Custodian made a check list and provided same to the Complainant. As authority for the redactions, the Custodian cited to N.J.S.A. 47:1A-1.1 (personally identifying information), N.J.S.A. 47:1A-1 (to safeguard a citizen's personal information which disclosure thereof would violate a citizen's reasonable expectation of privacy N.J.S.A. 47:1A-10 (personnel records), and Executive Order #21 (safety concerns).

Regarding the Complainant's concern that he was not treated anonymously, she explained that she addressed the Complainant by name rather than "Anonymous" because the Complainant delivered the request in person and later picked up the response in person. Further, the Custodian stated she had been personally introduced to the Complainant as "Mr. Green" by a former co-worker a few weeks before he filed his request. The Custodian also maintained that another employee of her office, who was present when the Complainant filed his OPRA request, knew the Complainant by name and sight.

Additional Submissions:

On May 15, 2015, the GRC sought clarification from the Custodian regarding the method of delivery. The GRC asked the Custodian to explain why she provided the records for Item No.

⁴ Several months after filing the Denial of Access Complaint, the Complainant expressly clarified in writing that his complaint is "not about charges." For that reason, the GRC will not review the fees charged by the Custodian.

2 in paper format rather than on the CD. On May 21, 2015, the Custodian responded, certifying that she strictly followed the instructions set forth in the original OPRA request. The Custodian pointed out that the Complainant explicitly indicated that he wanted a copy of his first item in “CD form” but otherwise indicated no preference for the second and third listed items.

In seeking to weigh the Custodian’s privacy interest and the need for disclosure, the GRC requested additional information on July 28, 2015, asking both the Custodian and Complainant to complete balancing test questionnaires. On July 30, 2015, the Complainant wrote to the GRC, stating, “[m]y issue is not her address My problem mainly is that if she has the right to redact her personnel info I have the right to file as whoever I want without her insertion into my name in this” (sic). On August 3, 2015, the Custodian replied with detailed answers to the balancing test questionnaire. On August 4, 2015, the Complainant, who did not give any direct response to the questions listed in the questionnaire, stated in an e-mail to the GRC:

“My main problem is not about the redacting of her info. [I]t was about the insertion of my name when I clearly did not file it as such...I could care less about her personnel info and believe she should have done the same concerning me...Bottom line this opra was filed as anonymous nothing more and nothing less. [The Clerk] took it upon herself to use the insertion of my name which she DID NOT KNOW⁵ to create a situation that was absolutely unprofessional...I DON’T CARE ABOUT HER PERSONNEL INFO” (Emphasis in original).

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.

In the matter currently before the Council, the Complainant initially challenged redactions made to the responsive résumé, asserting that the redactions are “not allowable by GRC guidelines.” However, in his responses to the GRC’s requests for additional information, the Complainant explained his position, making clear that the Custodian’s redactions are, in fact, of no concern to him. Instead, his concern is merely that the Custodian did not respect his desire to be anonymous.

The Complainant focused on the Custodian’s behavior rather than the disclosed records. The Complainant decried the Custodian as being “rude” and “unprofessional.” However, the GRC has no authority to address those allegations. N.J.S.A. 47:1A-7(b). His “bottom line” was that he “filed anonymously” and argued that the Custodian deliberately sought out his identity. While OPRA contemplates anonymous requests (N.J.S.A. 47:1A-5.i) the Complainant could not

⁵ He stated that he was “introduced to the Clerk as nothing more than Bob.”

reasonably have expected to be treated anonymously when he visited the Custodian's office at a public building twice, first to file the request then later to pick up the records.

In his clarified complaint, the Complainant failed to allege an unlawful denial of access. Nor did he advance any arguments or cite to any legal precedents cognizable under OPRA in support of his complaint. *See* N.J.S.A. 47:1A-6. In addition, the Complainant failed to state a claim on which the GRC could grant relief and has raised no valid cause of action on which the GRC could grant relief.

Therefore, because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to documents, the Complainant failed to state a claim on which the Council could grant relief. *See* Loigman v Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014); Alterman v. Sussex Cnty. Sherriff's Office, GRC Complaint No. 2013-353 (September 2014); Murphy v. Borough of Atlantic Highlands, GRC Complaint No. 2014-76 (October 2014). Accordingly, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint, finding that the Complainant's Denial of Access Complaint lacks any factual or legal basis alleging he was denied access to documents and that the Complainant failed to state a claim on which the Council could grant relief. N.J.S.A. 47:1A-6. *See also* Loigman v Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014); Alterman v. Sussex Cnty. Sherriff's Office, GRC Complaint No. 2013-353 (September 2014); Murphy v. Borough of Atlantic Highlands, GRC Complaint No. 2014-76 (October 2014).

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph Glover
Executive Director

September 22, 2015⁶

⁶ The GRC originally scheduled the complaint for adjudication on July 28, 2015, but the Council instead chose to table the matter.