



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**March 31, 2015 Government Records Council Meeting**

Vincent T. Ehmann  
Complainant

Complaint No. 2014-281

v.

Borough of Belmar (Monmouth)  
Custodian of Record

At the March 31, 2015 public meeting, the Government Records Council (“Council”) considered the March 24, 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 bore her burden of proving she did not unlawfully deny access to Item No. 1. N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the Statement of Information that she provided all responsive records to the Complainant for inspection. Furthermore, there is no evidence in the record to refute the Custodian’s Statement of Information. *See Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005). *See also Heyman (On behalf of Lisa Richford) v. Cnty. of Mercer, Office of Cnty. Counsel*, GRC Complaint No. 2011-249 (December 2012).

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 31<sup>st</sup> Day of March, 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: April 2, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 31, 2015 Council Meeting**

**Vincent T. Ehmman<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-281**

v.

**Borough of Belmar (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

OPRA Request No. 1: Electronic copies via e-mail of invoices for “Certain Previous Emergency Appropriations and Temporary Appropriations” to support Ordinance No. 2013-05 bonding the amounts of \$336,000; \$304,000; and \$1,000,000.

OPRA Request No. 2: Electronic copies via e-mail of invoices for “Certain Previous Emergency Appropriations and Temporary Appropriations” to support Ordinance No. 2013-06 bonding the amount of \$1,860,000.

**Custodian of Record:** April Claudio  
**Request Received by Custodian:** March 4, 2013  
**Response Made by Custodian:** March 4, 2013  
**GRC Complaint Received:** August 4, 2014

**Background<sup>3</sup>**

**Request and Response:**

On March 4, 2013, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing seeking clarification as to the type of invoices the Complainant sought. The Complainant responded advising that he was seeking prior expenditures noted in Ordinance Nos. 2013-05 and 2013-06 as well as additional itemized capital expenditures not included in the \$1,000,000 final cost.

On March 13, 2013, the Custodian e-mailed the Complainant stating that the Borough of

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Michael DuPont, Esq., of McKenna, DuPont, Higgins & Stone, P.C. (Red Bank, NJ).

<sup>3</sup> 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.

Belmar (“Borough”) was still working on these requests and would need additional time until March 18, 2013 to respond. On March 14, 2013, the Custodian e-mailed the Complainant asking if he could come in for an inspection due to the voluminous amount of responsive records. On March 20, 2013, the Complainant advised the Custodian that his review of the responsive records yielded the following:

- He was not provided with capital expenditure invoices in the amount \$336,000 and \$304,000 as provided in Ordinance No. 2013-05.
- He was not provided with capital expenditure invoices in the amount of \$1,800,000 as provided in Ordinance Nos. 2013-05 and 2013-06.

On the same day, the Custodian advised Colleen Connolly, Borough Administrator, and Mayor Matthew Doherty that they may need to speak with Robbin Kirk, Chief Financial Officer (“CFO”), to see if there were additional responsive invoices or an explanation for the alleged failure to provide records. On March 27, 2013, the Custodian contacted the Complainant via e-mail advising that additional invoices were located and pulled for his review. The Custodian also noted that, per CFO Kirk, not all of the money from the ordinances was spent at this time. On March 28, 2013, the Complainant reviewed the additional records.

#### Denial of Access Complaint:

On August 4, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that he did not receive the records responsive to his OPRA request. Specifically, the Complainant argued that he was not shown any of the expenditures reflected in Ordinance Nos. 2013-05 and 2013-06.

The Complainant based his allegation on discrepancies in a spreadsheet he created from his inspection of the invoices.<sup>4</sup> Specifically, the Complainant stated that when he reviewed responsive records on March 20, 2013, he found that \$640,000 was missing for Ordinance No. 2013-05. Further, the Complainant stated that he found that \$220,000 was missing for Ordinance No. 2013-06. The Complainant averred that, upon reviewing additional records on March 28, 2013, his sheet totaled an excess of \$22,217 over the \$1.86 million authorized under 2013-06.

Additionally, the Complainant contended that he was provided with records different from those submitted to the Local Finance Board. The Complainant further asserted that he believed additional records existed because the “emergency” had ended weeks ago and all expenditures had to be completed and/or at least billed.<sup>5</sup>

#### Statement of Information:

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<sup>4</sup> The Complainant included additional allegations of inappropriate spending and alterations to his spreadsheet, which the Borough submitted as part of an application to the Local Finance Board.

<sup>5</sup> The GRC notes that its sole purview is determining whether a complainant was unlawfully denied access to requested records. N.J.S.A. 47:1A-7(b). Thus, the GRC does not have the authority to address the Complainant’s issue with the emergency spending and the timing of same.

On September 9, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 4, 2013 and immediately responded seeking clarification. The Custodian affirmed that she utilized Ms. Patricia Zwirz, Purchasing Agent, and CFO Kirk to pull a voluminous amount of responsive purchase orders and corresponding invoices. The Custodian certified that the Complainant reviewed these records on March 20, 2013 and alleged that not all records were provided. The Custodian certified that she re-enlisted CFO Kirk’s assistance and located additional purchase orders and invoices. The Custodian certified that she contacted the Complainant on March 27, 2013 about the additional records and that the Complainant reviewed same on March 28, 2013. The Custodian noted that the Complainant never requested actual copies of these records.

The Custodian affirmed that she properly fulfilled the Complainant’s OPRA request by providing for inspection of the responsive records on two (2) occasions. The Custodian argued that the Complainant should have directed any questions about the purchase orders, invoices, and bond ordinances to Ms. Connolly or CFO Kirk. The Custodian asserted that questions about records are not considered valid OPRA requests. The Custodian contended that the Complainant is either having an issue understanding the records she provided for inspection or the overall process of municipal bonding, in which an agency bonds for a set amount of money and expends funds by invoice/purchase orders up to said amount. The Custodian noted that, when questioned about the amount discrepancies, she advised the Complainant that (per CFO Kirk) the Borough had not yet expended all money allocated in the bond.

### 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 Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the custodian produced one (1) responsive record to the complainant’s March 2, 2005, OPRA request and stated that no other responsive records existed. The complainant argued that more responsive records existed. Id. The GRC asked the custodian to certify as to whether all responsive records were produced. Id. On August 1, 2005, the custodian certified that the provided document was the only responsive record. Id. The GRC held that:

The Custodian certified that the Complainant was in receipt of all contracts and agreements responsive to the request. The Custodian has met the burden of proving that all records in existence responsive to the request were provided to the Complainant. Therefore there was no unlawful denial of access.

Id.

Here, the Complainant claimed that he was not provided with all responsive invoices. The Complainant relied upon a spreadsheet he created after his March 20, 2013, inspection and the total shortfall of money spent reflected therein. However, on March 28, 2013, the Complainant adjusted his spreadsheet after inspecting additional records and determined an excess in money spent. Thereafter, he filed this complaint arguing, among other things, that the Custodian failed to provide him all responsive records. However, the Custodian certified in the SOI that she provided the Complainant with all responsive records for inspection.

Thus, the crux of this complaint rests on the relationship between the records provided and the Complainant's allegations that he disagreed with the total amounts he arrived at in his spreadsheet. The Complainant's arguments appear to rely upon what he believed should be in existence. This is contrary to the Custodian's SOI certification that she provided him all responsive records. After a review of all evidence submitted by the parties, the GRC is satisfied that the Custodian did not unlawfully deny access to any records. Further, similar to Burns, the Custodian certified that she provided all responsive records for inspection and that the Complainant reviewed same. The spreadsheet discrepancies, which varied between inspections, do not support the existence of additional records at that time. Finally, the GRC is satisfied by the Custodian's explanation that not all money allocated under the ordinances had yet been spent.

Therefore, the Custodian bore her burden of proving she did not unlawfully deny access to Item No. 1. N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the SOI that she provided all responsive records to the Complainant for inspection. Furthermore, there is no evidence in the record to refute the Custodian's SOI and certification. *See Burns*, GRC 2005-68. *See also Heyman (On behalf of Lisa Richford) v. Cnty. of Mercer, Office of Cnty. Counsel*, GRC Complaint No. 2011-249 (December 2012).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian bore her burden of proving she did not unlawfully deny access to Item No. 1. N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the Statement of Information that she provided all responsive records to the Complainant for inspection. Furthermore, there is no evidence in the record to refute the Custodian's Statement of Information. *See Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005). *See also Heyman (On behalf of Lisa Richford) v. Cnty. of Mercer, Office of Cnty. Counsel*, GRC Complaint No. 2011-249 (December 2012).

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

Approved By: Dawn R. SanFilippo  
Deputy Executive Director

March 24, 2015