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

June 30, 2015 Government Records Council Meeting

Aakash Dalal
Complainant
v.
Camden County Prosecutor's Office
Custodian of Record

Complaint No. 2014-308

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 his burden of proof that he lawfully denied access to the Complainant's OPRA request because he certified, and the record reflects, that no responsive record exists. Moreover, the Complainant has provided no competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

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

Aakash Dalal[1] **GRC Complaint No. 2014-308**
Complainant

v.

Camden County Prosecutor's Office[2]
Custodial Agency

Records Relevant to Complaint: Copies of the following records:

1. All reports, written or compiled by Camden County Prosecutor's Office investigators or detectives, related to the incident and investigation referenced in the appended March 22, 2012, Statement made by the Camden County Prosecutor's Office.
2. All communications, including written and electronic communications, between employees of the Camden County Prosecutor's Office, including any prosecutors, detectives, and investigators, and employees of the Bergen County Prosecutor's Office regarding the aforementioned incident.
3. All notes or transcripts of interviews of witnesses or any other individuals by the Camden County Prosecutor's Office concerning the aforementioned incident.
4. All documents obtained by the Camden County Prosecutor's Office from the Bergen County Prosecutor's Office regarding the aforementioned incident, including the "information" referenced in the second sentence of the appended Statement.

Custodian of Record: Robert K. Uyehara, Jr., Esq.
Request Received by Custodian: August 13, 2014
Response Made by Custodian: August 14, 2014
GRC Complaint Received: September 2, 2014

Background[3]

Request and Response:

On August 4, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. The Custodian received the request on August 13, 2014, and responded in writing the next day, on August 14, 2014. The

[1] No legal representation listed on record.
[2] Represented by Howard Goldberg, Esq., Camden County Counsel.
[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 denied the Complainant's OPRA request, stating that after a review of the office's files, no records responsive to the request were located. The Custodian noted in his denial that if any such communication between the Bergen County Prosecutor's Office ("BCPO") and the Camden County Prosecutor's Office ("CCPO") regarding the "incident" existed, it would be privileged inter-agency advisory communications exempt from release under OPRA.

Denial of Access Complaint:

On August 25, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant filed a letter supplement to his complaint on August 26, 2014. In that supplement, the Complainant disputed the Custodian's denial to his request as "plainly absurd," while further asserting that "the Camden County Prosecutor's Office clearly refers to 'information' in its press statement that is relevant to my OPRA request." The Complainant referenced a March 22, 2012 press release by the CCPO, which he attached to his OPRA request and Complaint. In relevant part, the press release stated that authorities from the BCPO notified the CCPO that a blueprint for John F. Kennedy Elementary School in Berlin Township was found at the Complainant's residence but that there is otherwise no evidence of plans to cause damage to the school or harm anyone in the area. The press release also noted that the information caused concern and was promptly shared with the local police department.

Statement of Information:

On September 15, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on August 13, 2014, and responded, in writing, on August 14, 2014.

The Custodian certified that upon receiving the Complainant's OPRA request, he personally searched his office's investigative and prosecutorial files, using the office Infoshare computer system. He further certified that he utilized the Promis Gavel, FACTS, and ACS databases to find any Camden County charges. The Custodian certified that he did not locate any responsive records.

The Custodian noted that "the only record" created by his office relating to the Complainant's request was the press release of March 22, 2012, which the Complainant attached to his OPRA request. The Custodian noted that the Complainant did not request the press release, so no copy of the press release was provided, and that this press release was the "only record maintained by our office." The Custodian argued that, according to the press release, the information from Bergen County was "relayed" to the local police department, and ultimately no investigative records were created or maintained by the CCPO.

Additional Submissions:

On May 12, 2015, the GRC contacted the Custodian, seeking clarification as to the form in which "information" from the BCPO was conveyed to the CCPO. On May 15, 2015, the Custodian responded, certifying that, upon receiving the Complainant's OPRA request, he spoke

with his office's Public Information Officer, Jason Laughlin. The Custodian certified that he specifically asked Mr. Laughlin whether he had received written information from the BCPO concerning the Complainant. Mr. Laughlin informed the Custodian that, to Mr. Laughlin's recollection, he did not receive anything in writing, but that he believed he received the information in a telephone call.

Mr. Laughlin further told the Custodian that the CCPO did not "relay" any information to local police departments in writing. The Custodian certified that Mr. Laughlin advised that, to his recollection, the BCPO contacted the local police departments directly, via telephone. The Custodian certified that the CCPO had no other documents regarding the matter, apart from the March 22, 2012 press release.

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, in light of a custodian's certification that no records responsive to the request 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 no investigative files or records concerning the Complainant were created or maintained by the Custodian's office. Additionally, the Complainant failed to provide any competent, credible evidence in the record to refute the Custodian's certification. Rather, the press release provided by the Complainant merely alluded to "information" conveyed to the Prosecutor's Office but made no explicit reference to any identifiable government document, written or otherwise.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request because he certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

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 Complainant's OPRA request because he certified, and the record reflects, that no responsive record exists. Moreover, the Complainant has provided no competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Husna Kazmir
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015