



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

May 24, 2016 Government Records Council Meeting

Darlene Esposito
Complainant

Complaint No. 2014-310

v.

Township of Belleville (Essex)
Custodian of Record

At the May 24, 2016 public meeting, the Government Records Council (“Council”) considered the May 17, 2016 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 it adopts the May 6, 2016 Initial Decision of the Honorable John P. Scollo, Administrative Law Judge (“ALJ”), in which the Judge approved the Settlement Agreement signed by the parties or their representatives ordering the parties to comply with the settlement terms and further determining that these proceedings be concluded.

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 24th Day of May, 2016

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: May 27, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 24, 2016 Council Meeting**

**Darlene Esposito¹
Complainant**

GRC Complaint No. 2014-310

v.

**Township of Belleville (Essex)²
Custodial Agency**

Records Relevant to Complaint:

1. “[A]ny information which asserts, The Engineer who at the time made a request to the Commissioner of the N.J.D.O.T to make the [r]oad situated in Belleville N.J. known as [F]ranklin Street a one way under N.J.S.A. R.S.39:4-8, 39:4-198 and Senate Bill No. 745 and S2512.

2. (A) Any documentation that the municipal or county engineer under his seal certifying to the governing body of the municipality or county, and the designation or erections of signs marking the road situated in Belleville N.J. known as Franklin Street has been approved by the engineer after investigation of the circumstances, conforms to the current standards prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways, as adopted by the commissioner.

(B) Documentation on the due notices given to the public on the ordinance, resolution, or regulation adopted pursuant to R.S.39:4-198. mentioned above under the “State Highway Access Management Act,” P.L.1989, c.32 (C.27:7-89 et al.).

3. Inquiries, mailings, reviews, final regulations, Ordinance or resolutions in all entirety or complement to date on the road situated in Belleville NJ known as Franklin Street.”

Custodian of Records: Kelly A. Cavanagh
Request Received by Custodian: July 1, 2013
Response Made by Custodian: July 8, 2013
GRC Complaint Received: September 3, 2014

¹ No legal representation listed on record.

² No legal representation listed on record.

Background

June 30, 2015 Council Meeting:

At its June 30, 2015 public meeting, the 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, found that:

1. The Custodian failed to submit a completed SOI with certification to the Executive Director within the allotted time to respond. Thus, the Custodian is in violation of N.J.A.C. 5:105-2.4(a). See Alterman, Esq. v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2013-353 (September 2014).
2. The evidence in the record demonstrates that the Custodian responded to the Complainant's OPRA request on July 8, 2013, stating that no responsive records exist. However, the Custodian failed to certify to it by not submitting an SOI. Accordingly, based on the inconclusive evidence in this matter, the Council is unable to determine whether there was a lawful denial of access to the Complainant's OPRA request dated June 13, 2013. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. See Semprevivo v. Pinelands Reg'l School Dist. Bd. of Educ., GRC Complaint No. 2007-135 (October 2008). Furthermore, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On July 1, 2015, the Council distributed its Interim Order to all parties. On August 20, 2015, the complaint was transmitted to the Office of Administrative Law ("OAL"). On April 21, 2016, the parties fully executed a settlement agreement in which the Complainant agreed *inter alia* to withdraw her Denial of Access Complaint. On May 6, 2016, the Honorable John P. Scollo, Administrative Law Judge ("ALJ") issued an Initial Decision as follows:

1. The parties have voluntarily agreed to the resolution of the within matter as evidenced by their signatures or the signatures of their representatives.
2. The Consent Order fully disposes of all issues in controversy and is consistent with the law.

Therefore, the ALJ in his decision "**CONCLUDE[D]** that this Consent Order meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the terms, and it is **FURTHER ORDERED** that the proceedings in this matter be concluded."

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council adopt the May 6, 2016 Initial Decision of the Honorable John P. Scollo, Administrative Law Judge (“ALJ”), in which the Judge approved the Settlement Agreement signed by the parties or their representatives ordering the parties to comply with the settlement terms and further determining that these proceedings be concluded.

Prepared By: Samuel A. Rosado
Staff Attorney

May 17, 2016



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

June 30, 2015 Government Records Council Meeting

Darlene Esposito
Complainant

Complaint No. 2014-310

v.

Township of Belleville (Essex)
Custodian of Record

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:

1. The Custodian failed to submit a completed SOI with certification to the Executive Director within the allotted time to respond. Thus, the Custodian is in violation of N.J.A.C. 5:105-2.4(a). See Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014).
2. The evidence in the record demonstrates that the Custodian responded to the Complainant’s OPRA request on July 8, 2013, stating that no responsive records exist. However, the Custodian failed to certify to it by not submitting an SOI. Accordingly, based on the inconclusive evidence in this matter, the Council is unable to determine whether there was a lawful denial of access to the Complainant’s OPRA request dated June 13, 2013. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. See Semprevivo v. Pinelands Reg’l School Dist. Bd. of Educ., GRC Complaint No. 2007-135 (October 2008). Furthermore, this complaint should be referred to the Office of Administrative Law for determination 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 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 1, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2015 Council Meeting**

**Darlene Esposito¹
Complainant**

GRC Complaint No. 2014-310

v.

**Township of Belleville (Essex)²
Custodial Agency**

Records Relevant to Complaint:

1. “[A]ny information which asserts, The Engineer who at the time made a request to the Commissioner of the N.J.D.O.T to make the [r]oad situated in Belleville N.J. known as [F]ranklin Street a one way under N.J.S.A. R.S.39:4-8, 39:4-198 and Senate Bill No. 745 and S2512.

2. (A) Any documentation that the municipal or county engineer under his seal certifying to the governing body of the municipality or county, and the designation or erections of signs marking the road situated in Belleville N.J. known as Franklin Street has been approved by the engineer after investigation of the circumstances, conforms to the current standards prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways, as adopted by the commissioner.

(B) Documentation on the due notices given to the public on the ordinance, resolution, or regulation adopted pursuant to R.S.39:4-198. mentioned above under the “State Highway Access Management Act,” P.L.1989, c.32 (C.27:7-89 et al.).

3. Inquiries, mailings, reviews, final regulations, Ordinance or resolutions in all entirety or complement to date on the road situated in Belleville NJ known as Franklin Street.”

Custodian of Records: Kelly A. Cavanagh
Request Received by Custodian: July 1, 2013
Response Made by Custodian: July 8, 2013
GRC Complaint Received: September 3, 2014

¹ No legal representation listed on record.

² No legal representation listed on record.

Background³

Request and Response:

On June 13, 2013,⁴ the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records marked as OPRA Request No. 1. On July 1, 2013, the Custodian received the Complainant’s request. On July 8, 2013, the Custodian responded in writing, stating that no responsive records exist.

Denial of Access Complaint:

On August 28, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the engineer for Belleville does not want a challenge to a township ordinance reviewed in court. The Complainant contended that the Custodian’s failure to grant her OPRA request pertaining to the ordinance was an act in violation of N.J.S.A. 47:1A-5(d).

Statement of Information:

On September 9, 2014, the GRC requested a Statement of Information (“SOI”) from the Custodian, via e-mail. The GRC requested an SOI from the Custodian again on September 12, 2014, with the correct e-mail address. On September 25, 2014, the GRC submitted a No Defense Letter⁵ to the Custodian after failing to receive the SOI within the allotted five (5) business days to respond. On September 26, 2014, the GRC electronically forwarded the SOI documentation and Denial of Access Complaint to the Custodian at her request. To date, the Custodian has failed to submit a completed SOI with certification.

Additional Submissions

On January 28, 2015, the Custodian copied to the GRC correspondence that was delivered to the Complainant. The letter stated that the Custodian did not receive the Complainant’s request of June 3, 2014, but stated that her subsequent request of August 3, 2014, was responded to on August 21, 2014. Neither request was mentioned in the Complainant’s Denial of Access Complaint.

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 The Complainant claimed that she submitted additional OPRA requests on June 28, 2013, August 12, 2013, and April 28, 2014, but failed to provide copies of said requests in her Denial of Access Complaint.

⁵ A “No Defense Letter” is a written warning to the Custodian notifying them that they have not submitted a completed SOI. The letter grants the Custodian three (3) additional business days to submit an SOI from the date of receipt.

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.

Failure to Submit Statement of Information

The GRC’s regulations provide that “[c]ustodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

The regulations further provide that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

N.J.A.C. 5:105-2.4(f).

Finally, the regulations state “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the GRC requested a signed completed SOI from the custodian, to be submitted by no later than December 27, 2013. The custodian failed to submit an SOI, and the Council found him in violation of N.J.A.C. 5:105-2.4(a).

In the current matter, the GRC reached out to the Custodian on several occasions to request a completed SOI. The GRC provided the Custodian an additional five (5) business days to respond, despite delivering a No Defense Letter on September 25, 2014.

The Custodian failed to submit a completed SOI with a proper certification within the allotted time to respond. Thus, the Custodian is in violation of N.J.A.C. 5:105-2.4(a). *See* Alterman, Esq., GRC No. 2013-353.

Insufficient Facts to Adjudicate

In Semprevivo v. Pinelands Reg’l Sch. Dist. Bd. of Educ., GRC Complaint No. 2007-135 (October 2008), the GRC requested that the custodian provide information to the GRC which

was missing from the custodian's SOI. In reply, the custodian forwarded to the GRC three Board policies that the custodian said would provide the legal basis for the custodian to deny the complainant access to requested Board records. The GRC found that because there was inadequate evidence for the Council to render a meaningful decision in the matter, the complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts.

In the current matter, the evidence in the record demonstrates that the Custodian responded to the Complainant's OPRA request on July 8, 2013, stating that no responsive records exist. However, the Custodian failed to certify to it by not submitting an SOI. Accordingly, based on the inconclusive evidence in this matter, the Council is unable to determine whether there was a lawful denial of access to the Complainant's OPRA request dated June 13, 2013. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. *See Semprevivo*, GRC No. 2007-135. Furthermore, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to submit a completed SOI with certification to the Executive Director within the allotted time to respond. Thus, the Custodian is in violation of N.J.A.C. 5:105-2.4(a). *See Alterman, Esq. v. Sussex Cnty. Sheriff's Office*, GRC Complaint No. 2013-353 (September 2014).
2. The evidence in the record demonstrates that the Custodian responded to the Complainant's OPRA request on July 8, 2013, stating that no responsive records exist. However, the Custodian failed to certify to it by not submitting an SOI. Accordingly, based on the inconclusive evidence in this matter, the Council is unable to determine whether there was a lawful denial of access to the Complainant's OPRA request dated June 13, 2013. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. *See Semprevivo v. Pinelands Reg'l School Dist. Bd. of Educ.*, GRC Complaint No. 2007-135 (October 2008). Furthermore, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015