



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

October 27, 2015 Government Records Council Meeting

June Maxam (dba The North Country Gazette)
Complainant

Complaint No. 2014-350

v.

Bloomfield Township Department of Health
& Human Services (Essex)
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 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 complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on October 1, 2015, and further failed to submit to the GRC an explanation for her failure to appear, as provided by N.J.A.C. 1:1-18.4(a), within thirteen (13) days.

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 27th Day of October, 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 29, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting**

**June Maxam (dba The North Country Gazette)¹
Complainant**

GRC Complaint No. 2014-350

v.

**Bloomfield Township Department of
Health & Human Services (Essex)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. The agreement referenced in the Board of Health's ("Board") December 20, 2012, minutes stating that it had entered into same "with the current caretaker of Memphis . . ."
2. Transfer of ownership agreement/adoption agreement memorializing the transfer of Memphis from the Bloomfield Township ("Township") animal shelter to Neighbor to Neighbor Network ("NTNN") or anyone else.

Custodian of Record: Karen Lore

Request Received by Custodian: October 3, 2014

Response Made by Custodian: October 15, 2014

GRC Complaint Received: October 20, 2014

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:

[T]his complaint should be consolidated with Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep't of Health & Human Serv. (Essex), GRC Complaint No. 2013-285 (Interim Order dated September 30, 2014), and referred to the Office of Administrative Law for a hearing. The OAL should resolve the facts to determine whether the Custodian unlawfully denied the Complainant access to the records requested, and if so, determine whether the Custodian

¹ No legal representation listed on record.

² Represented by Ronald J. Ricci, Esq., of Ricci & Fava, LLC (Woodland Park, NJ).

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 GRC transmitted the complaint to the Office of Administrative (“OAL”). On October 5, 2015, OAL transmitted this complaint back to the GRC because the Complainant failed to appear for a scheduled hearing on October 1, 2015. The Complainant failed to submit to the GRC an explanation for her failure to appear, as provided by N.J.A.C. 1:1-18.4(a), within thirteen (13) days.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on October 1, 2015, and further failed to submit to the GRC an explanation for her failure to appear, as provided by N.J.A.C. 1:1-18.4(a), within thirteen (13) days.

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

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2015



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

June Maxam(dba The North Country Gazette)
Complainant

Complaint No. 2014-350

v.

Bloomfield Township Department of Health &
Human Services (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 this complaint should be consolidated with Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep't of Health & Human Serv. (Essex), GRC Complaint No. 2013-285 (Interim Order dated September 30, 2014), and referred to the Office of Administrative Law for a hearing. The OAL should resolve the facts to determine whether the Custodian unlawfully denied the Complainant access to the records requested, and if so, determine 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**

**June Maxam (dba The North Country Gazette)¹
Complainant**

GRC Complaint No. 2014-350

v.

**Bloomfield Township Department of
Health & Human Services (Essex)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. The agreement referenced in the Board of Health's ("Board") December 20, 2012 minutes stating that it had entered into same "with the current caretaker of Memphis . . ."
2. Transfer of ownership agreement/adoption agreement memorializing the transfer of Memphis from the Bloomfield Township ("Township") animal shelter to Neighbor to Neighbor Network ("NTNN") or anyone else.

Custodian of Record: Karen Lore

Request Received by Custodian: October 3, 2014

Response Made by Custodian: October 15, 2014

GRC Complaint Received: October 20, 2014

Background³

Request and Response:

On October 2, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian, seeking the above-mentioned records. On October 14, 2014, Mr. Ernest Gonzalez advised Ms. Joann Bruno, OPRA Clerk, that no records existed for item No. 1 and that he was forwarding records responsive to item No. 2. On October 15, 2014, Ms. Bruno responded in writing, advising the following:

1. Per Mr. Gonzalez, no record responsive to item No. 1 exists.
2. Per Mr. Gonzalez, attached is the responsive agreement between the Township and NTNN.

¹ No legal representation listed on record.

² Represented by Ronald J. Ricci, Esq., of Ricci & Fava, LLC (Woodland 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.

June Maxam (dba The North Country Gazette) v. Bloomfield Township Department of Health & Human Services (Essex), 2014-350 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On October 20, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).

Regarding OPRA request item No. 1, the Complainant asserted that she was unlawfully denied access to the responsive agreement. The Complainant stated that, in response to a September 2013 OPRA request, she received a letter, dated September 3, 2013, from Mr. Ronald Ricci, Esq., to Mr. Brian Aloia. Therein, Mr. Ricci made mention of a resolution memorializing that the Board was transferring ownership of Memphis to NTNN. The Complainant noted that the resolution, dated December 20, 2012, was attached to the letter. The Complainant contended that this record, which she referred to as a contract, is the record she sought in request item No. 1. The Complainant argued that, notwithstanding evidence that a record exists, both Mr. Gonzalez and the Custodian advised Ms. Bruno that records existed.

Regarding OPRA request item No. 2, the Complainant argued that the record provided, an “agreement” dated September 20, 2012, was not responsive to the request. The Complainant contended that the record did not transfer ownership of Memphis to NTNN. The Complainant noted that the record specifically provided that the Board was not providing NTNN any ownership rights to Memphis. *Id.* at ¶ 10. Additionally, the Complainant asserted that the “agreement” does not appear in any Board minutes, nor was there no resolution concerning same in the September 2012 minutes.

The Complainant contends that the evidence supports that both the Custodian and Mr. Gonzalez knowingly and willfully violated OPRA.

Statement of Information:

On October 29, 2014, the Custodian filed a Statement of Information (“SOI”). Ms. Bruno certified that she received the Complainant’s OPRA request on October 3, 2014, and properly forwarded the request to the Custodian. Ms. Bruno noted that although the Board is an autonomous agency, they report to the Custodian, who is the Director of Health and Human Services in the Township. Ms. Bruno thus affirmed that, notwithstanding the autonomous nature of the Board, the Township processes all OPRA requests through the Clerk’s Office. Ms. Bruno certified that she provided to the Complainant the records that the Board had sent to her.

Additionally, the Ms. Bruno affirmed that the records at issue here were the exact records at issue in Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep’t of Health & Human Serv. (Essex), GRC Complaint No. 2013-285 (Interim Order dated September 30, 2014), which is currently awaiting final action from the Office of Administrative Law.

In turning to the Complainant’s arguments, the Custodian certified that the “agreement,” which the Complainant believes exists, was actually a verbal agreement. The Custodian affirmed that all other agreements, resolutions, and records regarding Memphis (numbering in the hundreds) have been provided to the Complainant. The Custodian certified that no record responsive to item No. 1 exists and that the Complainant’s misunderstanding is likely based on

her reading of other external sources, such as minutes, news articles, interviews, *etc.* The Custodian further certified that the record provided in response to item No. 2 may not have been the record the Complainant believed existed, but it is the responsive record that exists.

The Custodian noted that the Township has made every attempt to comply with the Complainant's OPRA requests, which have often been rambling, hostile, and confusing. The Custodian asserted that she and Ms. Bruno have showed great restraint, given their dealings with the Complainant. The Custodian finally asserted that neither the Township nor the Board can provide records that do not exist.⁴

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.

N.J.A.C. 1:1-17.1 provides in pertinent part that:

(a) As soon as circumstances meriting such action are discovered, an agency head, any party or the judge may move to consolidate a case which has been transmitted to the Office of Administrative Law with any other contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency.

(b) This rule shall apply to cases:

1. Already filed with the [OAL];
2. Commenced in an agency but not yet filed with the [OAL] . . .

Id.

In Maxam, GRC 2013-285, the Complainant's Denial of Access Complaint identified three (3) items as at issue, two (2) of which mirror the request items at issue here. The evidence indicates that the Complainant submitted an amended Denial of Access Complaint, removing the two (2) similar items from that complaint. However, the Custodian addressed those items in her SOI, and the Complainant submitted a counter-certification. For this reason, the GRC determined there to be insufficient and conflicting evidence, thus warranting a fact-finding hearing at the Office of Administrative Law ("OAL").

In a case involving a motion for an order made under Rule 3:42-1 to consolidate several cases, the Superior Court of New Jersey, Chancery Division, stated that:

⁴ The Complainant submitted two (2) e-mails between October 29 and October 30, 2014, which contained unsavory comments and allegations about the Custodian and others.
June Maxam (dba The North Country Gazette) v. Bloomfield Township Department of Health & Human Services (Essex), 2014-350 – Findings and Recommendations of the Executive Director

The test under the rule is whether these actions involve common questions of law or fact arising out of the same transaction or series of transactions. The plain purpose of the rule was to eliminate multiplicity of litigation and to enable the courts so to arrange pending causes that the same facts and transactions would not undergo the inconvenience of double litigation.

...

[T]he same documents, the same records, the same accountants and the same expert testimony must necessarily be used to substantiate both causes of action. If the causes are not consolidated, the court will find itself in a position where it will hear two lengthy and protracted trials in which the same witnesses, the same facts and the same testimony will be adduced. The fact that the relief sought is different in these cases should have no effect upon the question of whether the motion should be granted or not.

...

“The object of consolidating two or more actions is, among other things, the attainment of justice with the least expense and vexation to the parties litigant . . . The rule applies in regard to suits in equity as well as to actions at law.

Judson v. Peoples Bank & Trust Co., 17 N.J. Super. 143, 144-146 (Ch. Div. 1951).

As in Judson, the matter now before the Council shares common parties, records, and questions of both law and fact with Maxam, GRC 2013-285. As such, the consolidation of these two (2) matters for a hearing before the OAL will accomplish resolution of these matters with the least expense and vexation to the parties. Further, referral of this complaint to the OAL will accomplish the beneficial goals of administrative consistency and efficiency.

Therefore, this complaint should be consolidated with Maxam, GRC 2013-285, and referred to the OAL for a hearing to resolve the facts to determine whether the Custodian unlawfully denied the Complainant access to the records requested, and if so, for a further 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 this complaint should be consolidated with Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep’t of Health & Human Serv. (Essex), GRC Complaint No. 2013-285 (Interim Order dated September 30, 2014), and referred to the Office of Administrative Law for a hearing. The OAL should resolve the facts to determine whether the Custodian unlawfully denied the Complainant access to the records requested, and if so, determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

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

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015