



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, 2016 Government Records Council Meeting

Tyrone Maurice Jamison (Bey)
Complainant

Complaint No. 2014-381

v.

North Brunswick Township (Middlesex)
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council (“Council”) considered the August 23, 2016 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 her burden of proof that she lawfully denied access to the requested records, described in the Complainant’s November 6, 2014 OPRA request, because she certified and the record reflects that no responsive records exist. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. 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 29th Day of September, 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: October 4, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2016 Council Meeting**

**Tyrone Maurice Jamison (Bey)¹
Complainant**

GRC Complaint No. 2014-381

v.

**North Brunswick Township (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:

“[A]ll police/law-enforcement records pertaining to Tyrone Maurice Jamison (Bey) for the incident of July 14th, 2014.”³

Custodian of Records: Lisa Russo

Request Received by Custodian: November 6, 2014

Response Made by Custodian: November 10, 2014; November 14, 2014

GRC Complaint Received: November 17, 2014

Background⁴

Request and Response:

On November 6, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request, seeking in part the above-mentioned records.⁵ The Custodian responded in writing on November 10, 2014; however it is unclear what the Custodian’s response entailed based upon the record. The record also indicated that the Custodian responded further on November 14, 2014.

Denial of Access Complaint:

On November 17, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant restated the procedural history above, without any additional argument. The Complainant insisted that an incident occurred on July 14,

¹ No legal representation listed on record.

² Represented by Ronald H. Gordon, Esq. (Teaneck, NJ).

³ The Complainant sought other records in his OPRA request, but they are not at issue in this matter.

⁴ 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.

⁵ In a previous OPRA request dated November 5, 2014, the Complainant sought in part the records currently at issue. The subject OPRA request is a revision of the prior request.

Tyrone Maurice Jamison (Bey) v. North Brunswick Township (Middlesex), 2014-381 – Findings and Recommendations of the Executive Director

2014, involving a residence near to his own and the North Brunswick Police (“NBP”), and as a result, there should be an incident report or other form of police report memorializing the matter.

Statement of Information:

On February 17, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she conducted a search of NBP’s files and reached out to NBP’s Public Safety Director and Deputy Chief of Police to locate any responsive records. The Custodian certified that the search failed to locate records pertaining to an incident between NBP officers and any residence located near the Complainant’s home on July 14, 2014. The evidence in the record demonstrated that the Custodian responded to the Complainant’s November 6, 2014 OPRA request on November 10, 2014, and again on November 14, 2014. The record was unclear as to what responsive records the Custodian provided on November 10 and November 14, 2014.

The SOI also indicated that the Custodian e-mailed the Complainant on November 14, 2014, stating that there were no responsive records related to an incident near the Complainant’s residence on July 14, 2014. The Custodian provided the Complainant with scans of police dispatch reports dated July 14, 2014 to show that, while NBP officers were present near the Complainant’s residence, no incidents were called, or investigations conducted.

Additional Submissions:

On May 26, 2016, the GRC requested additional information from the Custodian, seeking details on when and what records she provided the Complainant after receiving the November 6, 2014 OPRA request. The Custodian responded on June 1, 2016, elaborating on the circumstances surrounding the November 10, 2014 response to the Complainant. The Custodian certified that on November 10, 2014, she provided the Complainant with records responsive to non-relevant portions of the Complainant’s OPRA request. The Custodian also certified that she responded to the Complainant’s request for police reports by providing dispatch reports for the date of July 14, 2014. The Custodian wished to demonstrate that there were no recorded incidents in the Complainant’s neighborhood and therefore no responsive records to his OPRA request.

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). In the instant matter, the Complainant sought records pertaining to an alleged incident that occurred at a residence near to

his own on July 14, 2014. The Custodian certified that a search failed to locate any responsive records pertaining to any incident or investigation involving a nearby residence and the NBP. Additionally, the Complainant failed to provide any evidence in the record to rebut the Custodian's certification. Notwithstanding the discrepancy of when the Custodian responded to the Complainant, the Custodian timely responded to the Complainant, stating that no responsive records could be located.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested records, described in the Complainant's November 6, 2014 OPRA request, because she certified and the record reflects that no responsive records exist. 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 her burden of proof that she lawfully denied access to the requested records, described in the Complainant's November 6, 2014 OPRA request, because she certified and the record reflects that no responsive records exist. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado
Staff Attorney

August 23, 2016⁶

⁶ The matter was approved for the August 30, 2016 meeting but was cancelled due to lack of quorum. Tyrone Maurice Jamison (Bey) v. North Brunswick Township (Middlesex), 2014-381 – Findings and Recommendations of the Executive Director