



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

October 28, 2014 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

v.

NJ State Police
Custodian of Record

Complaint No. 2014-56

At the October 28, 2014 public meeting, the Government Records Council (“Council”) considered the October 21, 2014 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 was not required to respond to the Complainant’s January 14, 2014 e-mail referencing OPRA because the LPS OPRA website clearly articulates its transmittal policy that it will not accept OPRA requests submitted via e-mail. *See Paff v. City of East Orange*, 407 N.J. Super. 221 (App. Div. 2009); *Paff v. Bordentown Fire Dist. No. 2 (Burlington)*, GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013); *Roundtree v. N.J. Dep’t of State*, GRC Complaint No. 2013-260 (June 2014). The Council should decline to address the Complainant’s request because same did not comply with the N.J. Department of Law & Public Safety’s OPRA transmittal policy. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

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 28th Day of October, 2014

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 30, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 28, 2014 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2014-56

v.

**New Jersey State Police²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of:

1. Regarding the complaint filed by Harry Scheeler against James Ziggler on January 6, 2014 at Woodbine Station: access to the arrestee's name, age, residence, occupation, marital status, time and place of arrest, text of the charges, arresting agency, identity of arresting personnel, amount of bail and whether it was posted.
2. Call sheet regarding the above referenced incident.

Custodian of Record: Marco Rodriguez
Request Received by Custodian: January 14, 2014
Response Made by Custodian: N/A
GRC Complaint Received: January 28, 2014

Background³

Request and Response:

On January 10, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking an electronic copy of a police report filed by the Complainant at Woodbine Station on January 6, 2014. On January 14, 2014, the Custodian responded, in writing, denying access to the record as a criminal investigatory record.

On January 14, 2014, the Complainant submitted an e-mail request referencing OPRA, seeking the above-mentioned records. The Complainant cited Executive Order 69 and N.J.S.A. 47:1A-3(b) as authority for requested Item No. 1. The Complainant also referenced Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128 (November 2004) as authority for

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Megan E. Shafranski.

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.

requested Item No. 2. The evidence in the record indicates that the Custodian did not respond to the Complainant's e-mail.

Denial of Access Complaint:

On January 28, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that although he was aware that the State of New Jersey provides a dedicated website to submit OPRA requests to departments and agencies, he contended that submission via e-mail is still lawful. The Complainant referenced Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), arguing that a Custodian cannot deny access to a record solely on the basis that the request was not submitted via an official form.

Statement of Information:

On March 4, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he did not respond to the Complainant's January 14, 2014 e-mail. The Custodian asserted that pursuant to the stated policy with the N.J. Department of Law & Public Safety ("LPS"),⁴ the New Jersey State Police does not accept OPRA requests submitted by e-mail. Thus, the Custodian contended that he was not obligated to respond to the Complainant's e-mail as though it were a valid OPRA request.

Analysis

Validity of the OPRA Request

OPRA provides that:

The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following:

- 1) specific directions and procedures for requesting a record;
- 2) a statement as to whether prepayment of fees or a deposit is required;
- 3) the time period within which the public agency is required by [OPRA], to make the record available;
- 4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- 5) space for the custodian to list reasons if a request is denied in whole or in part;
- 6) space for the requestor to sign and date the form;

⁴ The New Jersey State Police is a Division of the Department of Law & Public Safety.

- 7) space for the custodian to sign and date the form if the request is fulfilled or denied.

N.J.S.A. 47:1A-5(f).

Furthermore, OPRA states that “a request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian.” N.J.S.A. 47:1A-5(g).

In Renna, the Appellate Division held that although requestors shall continue to use public agencies’ OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. 407 N.J. Super. at 230. This permits requestors to write their own correspondence requesting records from a custodian, as long as the request properly invokes OPRA.

However, in Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009),⁵ the Appellate Division stated that “N.J.S.A. 47:1A-5(f)(1) expressly delegates authority to each custodian of government records to adopt a form for use in making OPRA requests that includes ‘specific directions and procedures for requesting a record.’” The Court went on to state that “the procedures adopted by a custodian of government records for transmittal of OPRA requests, like any other action by a public official or agency, must be reasonable. *See N.J. Builders Ass’n v. NJ Council on Affordable Hous.*, 390 N.J. Super. 166, 181-84 (App. Div. 2007). Consequently, a custodian may not exercise his authority under N.J.S.A. 47:1A-7(f)(1) in a manner that would impose an unreasonable obstacle to the transmission of a request for a governmental record, such as, for example, by requiring any OPRA request to be hand-delivered.” Id. at 229.

Thus, although a custodian is not permitted to deny a request for records under OPRA simply because it is not on the agency’s form, an agency does have the authority to dictate the methods by which a requestor can transmit and OPRA request. The Council applied this reasoning in Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013) at 3-4. There, the Council determined that the custodian improperly required the complainant to submit his requests on the official form but that the Fire District’s policy of not accepting requests via e-mail was proper because it did not impose an unreasonable obstacle to transmission of OPRA requests. Id. at 5. The Council reasoned that:

The Complainant’s April 21, 2012 request contains the following statement, “[p]lease accept this e-mail/fax as my request for government records in accordance with the Open Public Records Act (OPRA) . . .” The original Custodian’s response dated May 2, 2012, states, “[t]he email appears to be a request, under OPRA, for certain documents of this Fire District.” The original Custodian’s response makes it clear that he understood the Complainant’s e-mail to be an OPRA request for records. The Complainant’s May 11, 2012 request also contains the following statement, “[p]lease accept this as my request for government records in accordance with the Open Public Records Act (OPRA) . .

⁵ On appeal from Paff v. City of East Orange, GRC Complaint No. 2007-297 (March 2008).

.” The original Custodian, in his response dated May 16, 2012, confirms receipt of the Complainant’s request entitled “OPRA Request.” Thus, the original Custodian’s response makes it clear that he understood the Complainant’s fax to be an OPRA request for records.

...

Based on the evidence of record, the original Custodian did not refuse to accept all types of electronic submissions. The evidence provides that the original Custodian refused to accept only e-mailed submissions. The original Custodian specifically refused to accept the Complainant’s e-mailed OPRA request as an “electronic submission” but did not refuse the faxed request as an “electronic submission.” More importantly, the Fire District includes its own fax number on its official OPRA request form, but fails to include an e-mail address. This evidence supports the finding that the Fire District will not accept e-mailed requests, but will accept requests hand-delivered, mailed, or faxed.

Id.

In Roundtree v. N.J. Dep’t of State, GRC Complaint No. 2013-260 (June 2014), the custodian responded to the complainant’s e-mailed OPRA request informing him that the New Jersey Department of State (“DOS”) had adopted LPS’s policy of no longer accepting OPRA requests submitted via e-mail or fax. The custodian cited Paff, 407 N.J. Super. 221, and an e-mail dated May 17, 2013 from a Deputy Attorney General advising of LPS’s transmittal policy. The Council held that these actions sufficiently demonstrated that the Custodian advised the Complainant of a change in DOS’s transmittal policy.

Here, the threshold issue is whether the Custodian articulated to the Complainant LPS’s transmittal policy. Similar to the complainant in Roundtree, the Complainant submitted an e-mail request explicitly referencing OPRA. GRC No. 2013-260. Conversely, the Custodian did not respond to the Complainant’s e-mail informing him of LPS’s transmittal policy. Id. Nonetheless, the Complainant admitted his knowledge of the State’s dedicated OPRA website (“OPRA Central”) in his Denial of Access Complaint. LPS’s OPRA website explicitly states that it “will not accept submission of a written request for access by fax or e-mail.”⁶ Additionally, the LPS-specific OPRA request form advises the requestor that OPRA requests submitted via e-mail or fax will not be accepted. For the foregoing reasons, the GRC is satisfied that the Custodian, through its website and the Complainant’s awareness of same, sufficiently articulated its OPRA transmittal policy.

The Custodian was not required to respond to the Complainant’s January 14, 2014 e-mail referencing OPRA because the LPS OPRA website clearly articulates its transmittal policy that it will not accept OPRA requests submitted via e-mail. *See* Paff, 407 N.J. Super. 221; Paff, GRC No. 2012-158; Roundtree, GRC No. 2013-260. The Council should decline to address the Complainant’s request because same did not comply with LPS’s OPRA transmittal policy. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

⁶ <http://www.state.nj.us/lps/opra/index.html> (Accessed October 16, 2014).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian was not required to respond to the Complainant's January 14, 2014 e-mail referencing OPRA because the LPS OPRA website clearly articulates its transmittal policy that it will not accept OPRA requests submitted via e-mail. *See Paff v. City of East Orange*, 407 N.J. Super. 221 (App. Div. 2009); *Paff v. Bordentown Fire Dist. No. 2 (Burlington)*, GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013); *Roundtree v. N.J. Dep't of State*, GRC Complaint No. 2013-260 (June 2014). The Council should decline to address the Complainant's request because same did not comply with the N.J. Department of Law & Public Safety's OPRA transmittal policy. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

October 21, 2014