



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

April 26, 2016 Government Records Council Meeting

Edward J. Sakos, Jr.
Complainant

Complaint No. 2015-158

v.

Township of Egg Harbor (Atlantic)
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the April 19, 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:

1. Pursuant to Spaulding v. Hudson County Register, GRC Complaint No. 2006- 157 (July 2007), the GRC will treat the Complainant’s March 28, 2015 correspondence as an OPRA request because the Custodian handled the letter as an OPRA request and because the Complainant availed himself of the GRC adjudicatory process by filing a Denial of Access Complaint with the GRC to challenge the Custodian’s alleged denial of the requested records. N.J.S.A. 47:1A-6.
2. The evidence of record indicates that no unlawful denial of access occurred, as the Custodian certified that any responsive records in existence and in possession of the Township were provided to the Complainant, and the Complainant did not provide evidence to the contrary. Indeed, the Complainant’s assertions primarily stated that the Custodian’s responses “may be true.” Furthermore, subsequent to the filing of the Complaint, the Custodian informed the GRC that the Complainant picked up the requested information on July 23, 2015.

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 26th Day of April, 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 2, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting**

**Edward J. Sakos, Jr.¹
Complainant**

GRC Complaint No. 2015-158

v.

**Township of Egg Harbor (Atlantic)²
Custodial Agency**

Records Relevant to Complaint:

Copies of the following:³

1. David Neyers' of Appraisal Services valuations of Complainant's property, including the following: cost estimate of the prime acre; cost estimate of Wet Lands with quantity of Wet Lands and unit cost; cost estimate of other lands, including quantity and unit cost.
2. If Vital Communications, Inc., provided Egg Harbor Township with an appraisal report during the 2012 reevaluation, which is similar to Mr. Neyers' report, please provide a copy.

Custodian of Record: MaryAnne C. Lavner, Eileen M. Tedesco (Original Custodian)

Request Received by Custodian: April 24, 2015

Response Made by Custodian: May 9, 2015; July 22, 2015

GRC Complaint Received: June 3, 2015⁴

Background⁵

Request and Response:

On March 28, 2015, the Complainant wrote to Stanley Bergman at the Atlantic County Board of Taxation seeking the above-mentioned records. On April 8, 2015, the Complainant

¹ No legal representation listed on record.

² Represented by Marc Friedman, Esq. (Linwood, NJ).

³ The Complainant submitted a letter seeking the records. The Complainant's request was neither on an OPRA request form, nor did the letter mention OPRA. Although the letter was not a valid OPRA request as submitted, the Custodian nonetheless responded to the request as if it were a valid OPRA request.

⁴ The Complaint was referred to mediation on June 15, 2015. The Complaint was referred back to the GRC on July 7, 2015.

⁵ 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.

wrote to the Atlantic County Board of Taxation, stating that he had not received a response to his March 28, 2015 letter and requested that he be forwarded “the requested discovery information as soon as possible.”

On April 13, 2015, the Complainant again wrote to Mr. Bergman, noting that he was in possession of “the first page of the property record cards for comparable sales listed by Vital Communications, Inc. and Appraisal Services, Inc.” and that he requested “copies of the backup pages for these comparable sales.” On April 24, 2015, the Complainant again wrote to the Board, stating he had received no responses to his previous three letters. The Complainant wrote that he had a brief conversation with Custodian MaryAnne Lavner on March 18, 2015, who “said that there is no Discovery.”

On May 5, 2015, the Custodian wrote the Complainant, stating the following: (1) the Township does not have copies of the letter of value sent to property owners on or about January 2013 from the revaluation company, (2) the Complainant was previously provided a copy of his property record card and the Township’s records depicting how his land is broken down per acre value, (3) the revaluation company did not supply the Township with comparable sales for each property in Egg Harbor Township, (4) the Complainant was supplied a copy of the appraisal prepared by David Neyers for year 2013 Tax Court Appeal and that the Township did not have the back-up information used by Mr. Neyers to conclude his value, (5) Mr. Neyers does not break down the land value as the assessors would. Instead, he arrives at a total value based upon the sales he used and has included in his appraisal, and the Township has no access to his preliminary work product, and (6) Vital Communication did not prepare an appraisal similar to Mr. Neyers for the Complainant’s property.

On May 9, 2015, the Complainant wrote to the Custodian, responding to her statements with the following assertions: (1) that he did not request the January 2013 letter of value from the revaluation company but rather a letter from Vital Communications referenced in a “Field Check,” which stated “see attached letter to local T/A from T?P” (2) he did not request copies of his property record cards because he “already had them,” (3) the Custodian’s statement that the evaluation company did not provide comparable values of his property is “false,” (4) while the Custodian’s statement that the Township did not possess Mr. Neyers’ backup information “may be true,” the Complainant asserted that Mr. Neyers “should have backup information,” (5) the Complainant argued that while “it may be true” that the Township has no access to Mr. Neyers’ preliminary work product, he requested “back-up pages to Neyers’ comparable sales which should be a matter of Public Record and in the possession of the Tax Assessor.” The Complainant noted “[the Custodian] may have difficulty obtaining the subject property record card[s] for the comparable sales used by Neyers for the two properties in Hamilton Township,” and (6) the Complainant asserted that while the Custodian’s statement that Vital Communication did not prepare an appraisal similar to Mr. Neyers was “probably true,” it “opens a question to the rigor of their appraisal.”

Denial of Access Complaint:

On June 1, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that as of the filing of the

Complaint, he had yet to receive copies of the second pages of the Property Record Cards for comparable sales used by Vital Communications, Inc., and by Appraisal Services, Inc. The Complainant asserted that the Custodian “failed to comply” with his request but made no additional legal arguments.

Statement of Information:

On July 23, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian averred that no “formal OPRA records request” was made to her office. She stated that a tax appeal was pending, and the letters sent by the Complainant were given to Stanley Bergman, the Township’s attorney (for tax appeals). She averred that because of the pending appeal and the fact that the letters are marked as “discovery,” Mr. Bergman construed the requests for information as part of the appeal process. The Custodian further argued that “information requested under discovery has a greater amount of time for response than an OPRA request.” The Custodian’s response on May 5, 2015, stated that her office was in receipt of the Complainant’s letter on April 24, 2015.

The Custodian further added that “some of the information requested did not exist, or it was not clear what [the Complainant] requested.” She further noted that the Complainant submitted a subsequent OPRA request on July 10, 2015,⁶ which again sought the previously requested items and was received by the Custodian “sometime during the week of July 13, 2015.”

The Custodian stated that she “finally” spoke to the Complainant on July 22, 2015, to “try and ascertain exactly what he wanted.” The Custodian stated that she and the Complainant “had a meeting of the minds” and argued that she had thereafter complied with what “[she thought] he was requesting.” The Custodian averred that she explained to the Complainant the items that the Township did not have, including information on properties located in other towns as well as the work product of a private appraiser. The Custodian averred that the responsive records she ultimately located consisted of 64 pages of computer print-outs from the Township’s database.

The Custodian included correspondence from July 22, 2015, advising the Complainant that the requested information was available for pick-up. On July 24, 2015, the Custodian wrote to the GRC, advising that the Complainant had picked up the requested information the previous day.

Analysis

Valid OPRA Request

In Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), 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

⁶ The July 10, 2015 OPRA request was submitted subsequent to the filing of the instant Denial of Access Complaint and will not be further discussed.

such records, when not presented on the official form, contains the requisite information prescribed by OPRA at N.J.S.A. 47:1A-5(f). *Id.* In effect, this permits requesters to write their own correspondence that requests records from a custodian, as long as the request properly invokes OPRA.

Here, the Complainant's March 28, 2015 letter, which sought records, and subsequent correspondence referencing that letter, were not submitted using any official OPRA request form. Additionally, the evidence of record provides that the letter does not reference OPRA and in fact references "discovery." However, the Custodian responded to the Complainant's letters on May 9, 2015, and ultimately treated this matter as an OPRA request.

In Spaulding v. Hudson County Register, GRC Complaint No. 2006- 157 (July 2007), although the Complainant submitted an OPRA request that was not on the Register's official records request form, the Custodian made an attempt to fulfill the Complainant's request, yet subsequently argued in the SOI that the Complainant had not filed such request on an official OPRA request form. The GRC held that "the Custodian's *attempt to fulfill* said request results in the request being considered [an] *OPRA request* . . ." (emphasis added), thus negating the Custodian's argument that the Complainant's OPRA request was invalid.

Although the request at issue in the instant complaint was not submitted on an official OPRA request form and did not reference OPRA, the Custodian's response treated the request as one subject to OPRA. Furthermore, the Complainant affirmatively availed himself of the GRC adjudicatory process when he filed a Denial of Access Complaint with the GRC after the Custodian's alleged denial of access to the requested records. N.J.S.A. 47:1A-6.

Therefore, pursuant to Spaulding, *supra*, the GRC will treat the Complainant's March 28, 2015 correspondence as an OPRA request because the Custodian handled the letter as an OPRA request and because the Complainant availed himself of the GRC adjudicatory process by filing a Denial of Access Complaint with the GRC to challenge the Custodian's alleged denial of the requested records. N.J.S.A. 47:1A-6.

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 Custodian's response to the Complainant on May 9, 2015, addressed the items sought by explaining that: (1) the Complainant was previously provided a copy of his property record card, (2) the reevaluation company did not supply the Township with comparable sales for each property in Egg Harbor Township, (3) the Complainant was previously provided a copy of the appraisal prepared by David Neyers, (4) the town is not in possession of Mr. Neyers' preliminary work product, and (5) Vital Communications did not prepare a similar appraisal for the Complainant's property.

Therefore the evidence of record indicates that no unlawful denial of access occurred, as the Custodian certified that any responsive records in existence and in possession of the Township were provided to the Complainant, and the Complainant did not provide evidence to the contrary. Indeed, the Complainant's assertions primarily stated that the Custodian's responses "may be true." Furthermore, subsequent to the filing of the Complaint, the Custodian informed the GRC that the Complainant picked up the requested information on July 23, 2015.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Pursuant to Spaulding v. Hudson County Register, GRC Complaint No. 2006- 157 (July 2007), the GRC will treat the Complainant's March 28, 2015 correspondence as an OPRA request because the Custodian handled the letter as an OPRA request and because the Complainant availed himself of the GRC adjudicatory process by filing a Denial of Access Complaint with the GRC to challenge the Custodian's alleged denial of the requested records. N.J.S.A. 47:1A-6.

2. The evidence of record indicates that no unlawful denial of access occurred, as the Custodian certified that any responsive records in existence and in possession of the Township were provided to the Complainant, and the Complainant did not provide evidence to the contrary. Indeed, the Complainant's assertions primarily stated that the Custodian's responses "may be true." Furthermore, subsequent to the filing of the Complaint, the Custodian informed the GRC that the Complainant picked up the requested information on July 23, 2015.

Prepared By: Husna Kazmir
Staff Attorney

April 19, 2016