



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**January 31, 2017 Government Records Council Meeting**

Joan E. Cegelka  
Complainant

v.

Borough of Victory Gardens (Morris)  
Custodian of Record

Complaint No. 2015-210

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the January 24, 2017 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 because the Custodian certified that the governing body had not approved a portion of the requested meeting minutes, such minutes are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. See Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-106 (February 2009) and Wolosky v. Stillwater Twp. (Sussex), GRC Complaint No. 2009-30 (January 2010). Accordingly, there was no unlawful denial of access of the Complainant’s June 17, 2015 OPRA request. 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 31<sup>st</sup> Day of January, 2017

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: February 3, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 31, 2017 Council Meeting**

**Joan E. Cegelka<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-210**

v.

**Borough of Victory Gardens (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:<sup>3</sup> Electronic copies of:**

1. Planning Board Meeting Minutes – Meeting Date: August 20, 2014
2. Planning Board Meeting Minutes – Meeting Date: September 17, 2014
3. Planning Board Meeting Minutes – Meeting Date: November 19, 2014
4. Planning Board Meeting Minutes – Meeting Date: January 21, 2015
5. Planning Board Meeting Minutes – Meeting Date: March 18, 2015
6. Planning Board Meeting Minutes – Meeting Date: May 20, 2015

**Custodian of Record:** Deborah Evans  
**Request Received by Custodian:** June 17, 2015  
**Response Made by Custodian:** June 18, 2015  
**GRC Complaint Received:** July 13, 2015

**Background<sup>4</sup>**

**Request and Response:**

On June 17, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 18, 2015, Deborah Devory, an assistant of the Custodian (“Assistant”), responded in writing, stating that she only has a portion of the 2014 minutes available and none from 2015. Further, the Assistant stated that she does not have the capability to scan and e-mail copies of minutes since they are in legal format,<sup>5</sup> but could make physical copies at no charge.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Philip Feintuch, Esq. (Jersey City, NJ).

<sup>3</sup> The Complainant originally sought all meeting minutes for 2014 and through 2015. The listed minutes are those at issue.

<sup>4</sup> 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.

<sup>5</sup> Legal sized paper: 8 ½ x 14 inches.

The Complainant replied to the Assistant on June 22, 2015, stating that unapproved minutes should be available in draft form and subject to disclosure. The Custodian responded that same day, informing the Complainant that the Assistant is away on vacation for the remainder of the week and that she would forward the message to her when she comes back. The Complainant responded shortly after, asking the Custodian why she could not produce the records herself. In reply, the Custodian stated that she does not have “access to Planning Board stuff,” and commented that, had the Complainant asked earlier, the Custodian could have retrieved the records from the Secretary of the Planning Board.

On June 29, 2015, the Complainant e-mailed the Custodian seeking a status update on her OPRA request and sent an additional inquiry on June 30, 2015. In a written letter dated June 29, 2015, and signed by the Complainant on July 2, 2015, the Complainant was informed that electronic copies of approved meeting minutes are unavailable but that hard copies are available for pick-up during normal business hours. The Complainant was also denied access to draft meeting minutes for 2014-2015, stating that meeting minutes are not subject to OPRA until approved.

#### Denial of Access Complaint:

On July 13, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant first stated that she had never been previously denied access to meeting minutes from other boards in the Borough of Victory Gardens, regardless of whether they had yet been approved. The Complainant also quoted language she claimed is from the “Clerk’s Municipal Guide,” stating in part:

If the minutes have not been approved within two weeks of the meeting, it is recommended the minutes be identified as “unapproved,” “draft,” “preliminary,” or other words to that effect when being made public. This way the two week window for making the meeting minutes available is met, and the public is aware that the minutes are subject to change[.]

#### Statement of Information:

On December 1, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 17, 2015, and her Assistant responded on June 18, 2015. The Custodian asserted that the minutes withheld from the Complainant had not been approved by the Planning Board at the time of the request. The Custodian contended that draft meeting minutes are not public records subject to OPRA. In addition to the SOI, the Custodian included, among other records, approved Planning Board meeting minutes for August 20, 2014 and November 19, 2014.

#### Additional Submissions:

On January 6, 2015, the Complainant e-mailed the GRC, attaching a meeting schedule for the Planning Board and noting at which meeting prior minutes were approved, if any. The Complainant argued that the public should not have to wait up to a year to receive approved

meeting minutes when the cause of the delay is a result of the Planning Board Secretary cancelling meetings and not approving draft minutes.

## 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.

OPRA further provides that “[g]overnment record’ or ‘record’ means any paper, written or printed book . . . information stored or maintained electronically . . . [t]he terms shall not include [ACD] material.” N.J.S.A. 47:1A-1.1. Regarding draft meeting minutes, the Council has previously determined same are exempt from disclosure pursuant to OPRA. In Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006), the Council held that “the Custodian has not unlawfully denied access to the requested meeting minutes as . . . said minutes had not been approved by the governing body and as such, they constitute [ACD] material and are exempt from disclosure . . .” (citing N.J.S.A. 47:1A-1.1). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-106 (February 2009) and Wolosky v. Stillwater Twp. (Sussex), GRC Complaint No. 2009-30 (January 2010).

In the instant matter, the Assistant responded to the Complainant’s OPRA request on June 18, 2015, stating that the Planning Board had not approved some of the meeting minutes for 2014-2015. The Complainant asserted that she is entitled to available meeting minutes, regardless of whether they have been approved or are still in draft form. However, GRC case law is clear in that meeting minutes are not subject to disclosure until approved by the governing body. See Parave-Fogg, GRC 2006-51; Verry, GRC 2008-106; and Wolosky, GRC 2009-30.

Therefore, because the Custodian certified that the governing body had not approved a portion of the requested meeting minutes, such minutes are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. See Parave-Fogg, GRC 2006-51; Verry, GRC 2008-106; and Wolosky, GRC 2009-30. Accordingly, there was no unlawful denial of access of the Complainant’s June 17, 2015 OPRA request. N.J.S.A. 47:1A-6.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian certified that the governing body had not approved a portion of the requested meeting minutes, such minutes are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. See Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-106 (February 2009) and Wolosky v. Stillwater Twp. (Sussex), GRC Complaint No. 2009-30 (January 2010).

Accordingly, there was no unlawful denial of access of the Complainant's June 17, 2015 OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado  
Staff Attorney

January 24, 2017