



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

November 17, 2015 Government Records Council Meeting

Catherine A. DeYoung
Complainant

Complaint Nos. 2015-311

v.

Borough of Folsom (Atlantic)
Custodian of Record

At the November 17, 2015 public meeting, the Government Records Council (“Council”) considered the November 10, 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 because the Complainant was neither the requestor of the records relevant to the complaint, nor the requestor’s legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records. Therefore, this complaint is materially defective and must be dismissed. 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 17th Day of November, 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: November 19, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 17, 2015 Council Meeting**

Catherine A. DeYoung¹
Complainant

GRC Complaint No. 2015-311

v.

Borough of Folsom (Atlantic)²
Custodial Agency

Records Relevant to Complaint: Copies of video surveillance server files from June 2, 2015, to September 10, 2015.³

Custodian of Record: Patricia M. Gatto
Request Received by Custodian: September 14, 2015
Response Made by Custodian: September 21, 2015
GRC Complaint Received: October 1, 2015

Background⁴

Request and Response:

On September 14, 2015, the requestor, David R. Castellani, submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 21, 2015, the fifth (5th) business day following receipt of said request, the Custodian responded in writing, informing the requestor that she attempted to obtain the requested records; however, despite seeking advice from the IT Department, the surveillance system manufacturer, and the installer, she was only able to access the logs from the system. The Custodian stated that she disclosed the logs from June 2, 2015, to September 10, 2015, to the requestor.

Denial of Access Complaint:

On October 1, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that, “[f]or the first two Oprah (sic) requests my attorney was involved. I am pursuing this matter Pro-Se from this point on.”

¹ Although the Complainant states on page 1 of the complaint that she is represented in this matter by David R. Castellani, Esq., the Complainant states on page 3 of the complaint that she is pursuing this matter *pro se*.

² Represented by Keith Bonchi, Esq. (Northfield, NJ).

³ There were other records requested that are not relevant to this complaint.

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.

The Complainant asserts that two (2) OPRA requests were filed with the Custodial Agency: the first dated August 6, 2015, and the second dated September 14, 2015.⁵ The Complainant states that she “authorized the submission of the OPRA request for records which is the subject of this [c]omplaint.”⁶ The Complainant states that the Custodian responded to the August 6, 2015, request on August 13, 2015, and responded to the September 14, 2015, request on September 21, 2015. The Complainant asserts that the hard drive should have all the dates June 26, 2015, through September 7, 2015, on the log. The Complainant states that the requested information was not provided and alleges that “[c]learly files have been deleted.”

Statement of Information:

On October 16, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the requestor’s OPRA request for the records relevant to this complaint on September 14, 2015, and that she responded in writing on September 21, 2015. The Custodian certifies that, “I have brought in our IT person, the surveillance systems installer and contacted the manufacturer by phone to help me access the documents that the complainant had requested. Despite all their efforts they were not able to retrieve the logs from the server just from the system.” The Custodian further certifies that on September 21, 2015, she “sent to the complainant” an unredacted copy of the surveillance system log from June 2, 2015, to September 10, 2015.⁷

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 also provides that “[a] person who is denied access to a government record by the custodian of the record...may...file a complaint with the Government Records Council...[t]he right to institute any proceeding under this section shall be solely that of the requestor.” N.J.S.A. 47:1A-6 (Emphasis added).

In Maxam (dba The North Country Gazette) v. Bloomfield Twp. Dep’t of Health & Human Services (Essex), 2013-302 (October 2014), the Council determined that because the

⁵ The request dated August 6, 2015, sought numerous records, none of which are relevant to this complaint. The second request was undated, but the parties agree that the request was received by the Custodian on September 14, 2015. It was this request that sought the records relevant to the complaint.

⁶ David R. Castellani submitted the OPRA request that formed the basis of this complaint (the undated request). There is no indication on the request that Mr. Castellani was acting in the capacity of an attorney when he filed the request, much less that he did so on behalf of the Complainant.

⁷ In the SOI, the Custodian refers on a few occasions to interacting with the “complainant.” It is unclear on such occasions if the Custodian is referring to the person who verified this complaint, Ms. DeYoung, or to the requestor of the records, Mr. Castellani.

complainant was neither the requestor of the records relevant to the complaint, nor the requestor's legal representative, she has no standing to pursue an action for unlawful denial of access pursuant to N.J.S.A. 47:1A-6.

Here, the Complainant alleged that the Custodian unlawfully denied her records that David R. Castellani sought via an OPRA request that was received by the Custodian on September 14, 2015. There is nothing in the evidence of record to indicate that the Complainant was serving as David R. Castellani's legal representative when she filed the complaint. It is clear under OPRA that only a requestor who was denied access to a government record has standing to pursue an action for unlawful denial of access.

Accordingly, because the Complainant was neither the requestor of the records relevant to the complaint, nor the requestor's legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records. Therefore, this complaint is materially defective and must be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant was neither the requestor of the records relevant to the complaint, nor the requestor's legal representative, the Complainant has no standing to pursue an action for unlawful denial of access to said records. Therefore, this complaint is materially defective and must be dismissed. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover
Executive Director

November 10, 2015