



State of New Jersey
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 24, 2019 Government Records Council Meeting

Stacie Percella
Complainant

Complaint No. 2017-201

v.

City of Bayonne (Hudson)
Custodian of Record

At the September 24, 2019 public meeting, the Government Records Council (“Council”) considered the September 17, 2019 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 his burden of proof that he lawfully denied access to the Complainant’s September 19, 2017 OPRA request seeking a contract between the City of Bayonne and Vision Media and any accompanying e-mails, payments, and invoices related to same. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see 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 24th Day of September 2019

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: September 27, 2019

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**TATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 24, 2019 Council Meeting**

**Stacie Percella¹
Complainant**

GRC Complaint No. 2017-201

v.

**City of Bayonne (Hudson)²
Custodial Agency**

Records Relevant to Complaint: “Contract of Vision Media with City of Bayonne. Date of Contract, payments, invoices, emails between City of Bayonne Administration and Vision Media.”

Custodian of Record: Robert F. Sloan³

Request Received by Custodian: September 19, 2017

Response Made by Custodian: September 25, 2017

GRC Complaint Received: October 19, 2017

Background⁴

Request and Response:

On September 19, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 25, 2017, Christina LaGatta responded in writing on behalf of the Custodian stating that the City of Bayonne (“City”) does not have a contract Vision Media and that no record exists.

Denial of Access Complaint:

On October 19, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Mayor Davis and Law Director John F. Coffey, II, Esq., were intentionally and unlawfully withholding records. The Complainant claimed that in a previous OPRA request dated June 5, 2017, she requested the same information regarding Vision Media and received responsive records.

The Complainant asserted that Vision Media quit being the spokesperson for Mayor Davis

¹ No legal representation listed on record.

² Represented by Jessica H. Connors, Esq. Previously represented by Karla Y. Garcia, Esq. (Bayonne, NJ).

³ The current Custodian of Record is Madelene Medina.

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.

and the City as of May 17, 2017. The Complainant then argued that on September 13, 2017, a representative of Vision Media gave a statement to local television media on behalf of the Mayor. The Complainant asserted that this contradicted the previous understanding that Vision Media was no longer working for the City. The Complainant asserted that the Custodian and City are not following the law and are unlawfully withholding access to public records.

The Complainant contended that the Custodian and the Law Director should be fined as a result of a continued practice of unlawfully denying access to public records.

Statement of Information:

On January 5, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 19, 2017. The Custodian certified that the request was forwarded to the Office of the Mayor for review. The Custodian certified that Ms. LaGatta responded in writing on his behalf on September 25, 2017, stating that the City did not have a contract with Vision Media and that no record exists.

The Custodian argued that the Complainant’s June 5, 2017 OPRA request sought different records than the request at issue here. The Custodian asserted that the June 5, 2017 request was a generic request for records pertaining to the City and/or Mayor Davis and Vision Media. The Custodian asserted that a proposal for a quarterly newsletter was among the records provided in response to the June 5, 2017 OPRA request, but that proposal did not result in a signed contract between the City and Vision Media. The Custodian therefore contended that no contract exists nor would invoices, payments, or e-mails related to such contract.

Lastly, the Custodian asserted that Vision Media did have a contract with the “Committee to Elect James Davis,” a private political entity not associated with the City. The Custodian maintained that no responsive records exist regarding the Complainant’s September 19, 2017 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, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant’s OPRA request sought a contract and any accompanying payments, invoices, and e-mails related thereto between Vision Media and the City. Ms. LaGatta, on behalf of the Custodian, responded directly to the Complainant, stating that no responsive records exist. The Complainant contended that she received responsive records from

an earlier request which contradict the Custodian's response, as well as a recent statement made by Vision Media seemingly on behalf of the City. However, the Custodian certified that the records the Complainant received from the previous OPRA request spoke of a proposal between the parties, but never resulted in a contract. Additionally, the Custodian certified that while the City and Vision Media do not have a contract, Vision Media is contracted with Mayor Davis' campaign committee, which is unaffiliated with the City.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's September 19, 2017 OPRA request seeking a contract between the City and Vision Media and any accompanying e-mails, payments, and invoices related to same. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's September 19, 2017 OPRA request seeking a contract between the City of Bayonne and Vision Media and any accompanying e-mails, payments, and invoices related to same. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado
Staff Attorney

September 17, 2019