



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 30, 2018 Government Records Council Meeting

Judy Faulkner
Complainant

Complaint No. 2017-215

v.

Hillsborough Township (Somerset)
Custodian of Record

At the January 30, 2018 public meeting, the Government Records Council (“Council”) considered the January 23, 2018 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. The Custodian’s response was insufficient because she failed to respond in writing to each item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian has borne her burden of proving that she did not unlawfully deny access to the requested record because she certified that she disclosed to the Complainant a complete unredacted copy of said record, and the Complainant’s item numbers 9 and 10 were not contained within it. Moreover, the Complainant has not provided any evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(b). *See also* Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); LoBosco v. N.J. Dep’t of Health & Human Servs., GRC Complaint No. 2010-64 (October 2010); Kwanzaa v. Dep’t of Corr., GRC Complaint No. 2004-167 (March 2005); Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003).

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 30th Day of January, 2018

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 2, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
January 30, 2018 Council Meeting**

**Judy Faulkner¹
Complainant**

GRC Complaint No. 2017-215

v.

**Hillsborough Township (Somerset)²
Custodial Agency**

Records Relevant to Complaint: “Copy [via e-mail] of the quarterly reports provided by RWJ EMS regarding their activity in Hillsborough Township during 2Q2017 and 3Q2017. This includes months of June, July, August and September to be exact.³ The report content is clearly delineated in Section 15A of the Agreement for Provision of Emergency Medical Services subsequent to award of contract adopted by Hillsborough Township Committee on March 28, 2017. The information sought will contain:

Item No. 9: Amount billed, amount received, amount considered uncollectible

Item No. 10: Payer mix⁴

Custodian of Record: Pamela Borek

Request Received by Custodian: October 11, 2017

Response Made by Custodian: October 20, 2017

GRC Complaint Received: November 6, 2017

Background⁵

Request and Response:

On October 11, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 20, 2017, the seventh (7th) business day following receipt of said request, the Custodian responded in writing informing the Complainant: “[a]ttached please find the response to the above mentioned OPRA request.”

¹ No legal representation listed on record.

² Represented by William Willard, Esq., of DiFrancesco Bateman, P.C. (Warren, NJ).

³ RWJ EMS is an abbreviation for Robert Wood Johnson Emergency Medical Services.

⁴ There were other records requested that are not relevant to this complaint.

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.

Denial of Access Complaint:

On November 6, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian responded to her October 11, 2017 OPRA request on October 20, 2017 by disclosing some of the items she requested, but that the Custodian failed to provide records responsive to item numbers 9 and 10.

The Complainant states that Hillsborough Township entered a contract with Robert Wood Johnson Barnabas Health Care – Mobile Health to provide emergency medical services to Hillsborough Township. The Complainant states that Section 15a of the contract stipulates reporting deliverables to be provided by the service provider to Hillsborough Township. The Complainant contends that item numbers 9 and 10 are contract reporting deliverables, and therefore should have been disclosed. The Complainant states that she sent follow up e-mails to the Custodian on October 20, 2017 and October 24, 2017, checking on the missing items; however, the Custodian failed to reply to said e-mails. The Complainant asserts that the Custodian is willfully denying the records.

Statement of Information:

On November 22, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 11, 2017, and responded in writing on October 20, 2017. The Custodian certifies that the record responsive to the request is a quarterly report from RWJ EMS regarding activity within Hillsborough Township consisting of 21 pages.

The Custodian certifies that a complete unredacted copy of the requested record was provided to the Complainant. The Custodian further certifies that the financial information referenced by the Complainant is not contained in the requested record, and that the Township is not in possession of such information. The Custodian also certifies that if the financial information was provided to the Township, it would not be subject to disclosure under N.J.S.A. 47:1A-1.1, because it consists of “trade secrets and proprietary commercial or financial information obtained from any source.”

Analysis

Sufficiency of Response

OPRA provides that a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually.” Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).

Here, the Custodian responded to the Complainant’s October 11, 2017 request on October 20, 2017, by stating, “[a]ttached please find the response to the above mentioned OPRA request.”

The Custodian did not address the list of enumerated items the Complainant specifically requested, or whether each of the items was included within the record that the Custodian disclosed.

Therefore, the Custodian's response was insufficient because she failed to respond in writing to each item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff, GRC 2007-272.

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 found no unlawful denial of access when a custodian certified that he provided all responsive records to the complainant, and there existed no credible evidence in the record to refute such certification. See Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).

Additionally, N.J.S.A. 47:1A-7(b) delineates the Council's powers and duties. Such powers and duties do not include authority over a record's accuracy or whether a record was filed in accordance with existing guidelines. See LoBosco v. N.J. Dep't of Health & Human Servs., GRC Complaint No. 2010-64 (October 2010). In Kwanzaa v. Dep't of Corr., GRC Complaint No. 2004-167 (March 2005), the Council held that it "does not oversee the content of documentation" but "does oversee the disclosure and non-disclosure of documents." See also Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003), stating integrity of requested record is not within GRC's authority to adjudicate.

Here, the Complainant sought copies of reports provided by Robert Wood Johnson Emergency Medical Services regarding their activity in Hillsborough Township during June, July, August and September of 2017, then went on to enumerate what the "information sought will contain." Of ten items listed, the Complainant alleged she was denied item numbers 9 and 10. The Custodian certified that she disclosed to the Complainant a complete unredacted copy of the requested record, and that the Complainant's item numbers 9 and 10 were not contained within the requested record. The Complainant has not provided any evidence to refute the Custodian's certification.

Therefore, the Custodian has borne her burden of proving that she did not unlawfully deny access to the requested record because she certified that she disclosed to the Complainant a complete unredacted copy of said record, and the Complainant's item numbers 9 and 10 were not contained within it. Moreover, the Complainant has not provided any evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(b). See also Kohn, GRC 2009-203 & 2009-211; LoBosco, GRC 2010-64; Kwanzaa, GRC 2004-167; Katinsky, GRC 2003-68.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's response was insufficient because she failed to respond in writing to each item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).

2. The Custodian has borne her burden of proving that she did not unlawfully deny access to the requested record because she certified that she disclosed to the Complainant a complete unredacted copy of said record, and the Complainant's item numbers 9 and 10 were not contained within it. Moreover, the Complainant has not provided any evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(b). *See also* Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); LoBosco v. N.J. Dep't of Health & Human Servs., GRC Complaint No. 2010-64 (October 2010); Kwanzaa v. Dep't of Corr, GRC Complaint No. 2004-167 (March 2005); Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003).

Prepared By: John E. Stewart

January 23, 2018