



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 12, 2019 Government Records Council Meeting

Eugene Seabrooks
Complainant

Complaint No. 2017-231

v.

City of East Orange (Essex)
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 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 her burden of proof that she lawfully denied access to the requested record as described in the Complainant’s OPRA request. Specifically, the Custodian certified that no responsive records exist pertaining to robbery report CC# 94-44560 and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC 2005-49 (July 2005). See also Barkley v. Newark Police Dep’t (Essex), GRC Complaint No. 2016-23 (February 2017); Regan v. Camden Cnty. Prosecutor’s Office, GRC Complaint No. 2016-28 (July 2017).

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 12th Day of November 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: November 15, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 12, 2019 Council Meeting**

**Eugene Seabrooks¹
Complainant**

GRC Complaint No. 2017-231

v.

**City of East Orange (Essex)²
Custodial Agency**

Records Relevant to Complaint: “[A] non-redacted version of the robbery report [(CC# 94-44560)] that is on the computer at the East Orange Police Department [“(EOPD)”].”

Custodian of Record: Cynthia Brown
Request Received by Custodian: June 14, 2016
Response Made by Custodian: June 22, 2016
GRC Complaint Received: December 6, 2017

Background³

Request and Response:

On June 14, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 22, 2016, Deputy Clerk Dale A. Forde responded in writing on behalf of the Custodian stating that the requested records were “not on file” with the EOPD. Deputy Clerk Forde directed the Complainant to contact the East Orange Municipal Court.

Denial of Access Complaint:

On December 6, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was being denied portions of the requested record. The Complainant alleged that he was told by the EOPD that no record existed, but later his mother, Ms. Merla Lawrence requested the same record and was furnished with a redacted version. The Complainant disputed that he was entitled to a non-redacted version of the requested record under OPRA.

¹ No legal representation listed on record.

² Represented by Ryan Linder, Esq. (East Orange, NJ).

³ 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.

Statement of Information:

On February 7, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 14, 2016. The Custodian certified that she forwarded the Complainant’s request to EOPD’s Professional Standards Unit. The Custodian affirmed that on June 21, 2016 the Unit responded advising that the “[m]atter is not on file with the . . . [EOPD].” The Custodian certified that Mr. Forde responded to the Complainant on her behalf on June 22, 2016 stating that no responsive records existed. The Custodian certified that Mr. Forde directed the Complainant to “contact the City of East Orange’s Municipal Court to obtain the requested information.”

Additional Submissions:

On February 23, 2019, the Complainant submitted a letter to the GRC with several supporting documents. The Complainant alleged that on July 31, 2014, Sgt. Powell of the EOPD wrote a letter to Ms. Lawrence. The Complainant further alleged that Sgt. Powell certified in that letter that the requested record exists but no “physical records” were available. The Complainant asserted that his attorney from a previous legal matter wrote Sgt. Powell requesting the date and time said record was created. The Complainant enclosed a copy of a subpoena to Sgt. Powell regarding the requested record from a previous legal matter.

The Complainant enclosed a copy of an alleged screenshot from the Essex County Prosecutor’s Office (“ECPO”) computer system depicting that the requested record exists. In addition, the Complainant referred to an October 14, 2014 letter from Andrew Burroughs, Esq. of the ECPO addressing the screenshot. The Complainant stated that therein, Mr. Burroughs noted that the EOPD destroyed physical records related to the robbery in accordance with its retention schedules. The Complainant contended that the EOPD should not have disposed of the requested record because it was part of pending litigation and responsive to the subject OPRA request.

On September 30, 2019, the GRC requested additional information from the Custodian. Specifically, the GRC asked the following questions:

1. Does the EOPD possess an electronic version of the report CC# 94-44560?
2. Does the East Orange Clerk’s Office or the EOPD have a copy of the original OPRA request made by Mr. Seabrooks on June 14, 2016? If so, please provide same.

On October 2, 2019, the Custodian responded to the GRC’s request for additional information. Therein, the Custodian certified that “[her] office does not possess, nor has it ever possessed an electronic version o[f] Report CC# 94-44560.” The Custodian further certified that she possessed a copy of the Complainant’s OPRA request and was providing same, as requested.

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 GRC has previously found that, in light of a custodian’s certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian’s certification, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC 2005-49 (July 2005). In Barkley v. Newark Police Dep’t (Essex), GRC Complaint No. 2016-23 (February 2017), the custodian certified that a search revealed that the requested 9-1-1 dispatch recording did not exist due to the system’s thirty (30) day purging. Additionally, the complainant provided no evidence to refute the custodian’s certification. The Council thus held that the custodian bore his burden of proof that he lawfully denied access to the requested 9-1-1 dispatch recording, as described in the complainant’s OPRA request (citing N.J.S.A. 47:1A-6 and Pusterhofer, GRC 2005-49). See also Regan v. Camden Cnty. Prosecutor’s Office, GRC Complaint No. 2016-28 (July 2017).

In the matter before the Council, the Complainant asserted in his Denial of Access Complaint that he requested a non-redacted version of the robbery report CC#94-44560. The Custodian, however, certified in the SOI that no records responsive to the Complainant’s OPRA request existed. In response to the SOI, the Complainant submitted several documents he alleged refuted the Custodian’s certification. Thereafter, the GRC sought additional information, to which the Custodian responded again certifying that no record existed. She also provided the GRC a copy of the subject OPRA request.

After reviewing all the evidence on record, the GRC is satisfied that the Custodian lawfully denied access to the responsive records. Further, the GRC is not persuaded that the Complainant’s SOI rebuttal provides competent, credible evidence to refute the Custodian’s certifications. To the contrary, said submissions support a finding that no record existed. Initially, the Complainant alleged that his mother was given a redacted version of the requested report in July 2014. However, Sgt. Powell’s letter to Ms. Lawrence states that EOPD had no physical records on file. Further, the Complainant submitted a copy of the alleged record at issue here, a screenshot allegedly from the ECPO computer system, as part of both his Denial of Access Complaint and SOI rebuttal. However, the fact that he possesses the record from almost two (2) years earlier does not sufficiently prove that the EOPD or Custodian still possessed same. Also, Mr. Burroughs’ letter to the Complainant’s previous counsel illustrates EOPD’s destruction of records regarding the robbery. Further, the Custodian’s certified statements and the letter from Sgt. Powell of the EOPD are consistent in stating no records exist.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested record as described in the Complainant’s OPRA request. Specifically, the Custodian certified that no responsive records exist pertaining to robbery report CC# 94-44560 and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49. See also Barkley, GRC 2016-23; Regan, GRC 2016-28.

In closing, the GRC notes that the Complainant's original OPRA request did not specifically seek an "unredacted copy version of the robbery report." Rather, the OPRA request sought "everything on file" regarding "CC# 94-44560." Notwithstanding, the evidence of record supports that no records existed at the time of the OPRA request.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the requested record as described in the Complainant's OPRA request. Specifically, the Custodian certified that no responsive records exist pertaining to robbery report CC# 94-44560 and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC 2005-49 (July 2005). See also Barkley v. Newark Police Dep't (Essex), GRC Complaint No. 2016-23 (February 2017); Regan v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2016-28 (July 2017).

Prepared By: Brandon Garcia
Case Manager

October 30, 2019