



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

April 28, 2020 Government Records Council Meeting

Michael T. Braden
Complainant

Complaint No. 2018-159

v.

Township of Lacey (Ocean)
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 21, 2020 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 lawfully denied access to the Complainant’s March 23, 2018 OPRA request seeking motor vehicle accident reports. N.J.S.A. 47:1A-6. Specifically, the Custodian lawfully charged the Complainant \$5.00 per copy of each motor vehicle accident report pursuant to N.J.S.A. 47:1A-5(b) and N.J.S.A. 39:4-131, since the Complainant did not submit his request in person. See Donato v. Jersey City Police Dep’t, GRC Complaint No. 2005-251 (April 2007); and Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007).

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 28th Day of April 2020

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: April 30, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2020 Council Meeting**

**Michael T. Braden¹
Complainant**

GRC Complaint No. 2018-159

v.

**Township of Lacey (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of motor vehicle accident (“MVA”) reports between February 21, 2018 through March 7, 2018.

Custodian of Record: Veronica Laureigh

Request Received by Custodian: March 23, 2018

Response Made by Custodian: March 26, 2018

GRC Complaint Received: August 1, 2018

Background³

Request and Response:

On March 23, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 26, 2018, Lisa Monbleau responded in writing on behalf of the Custodian stating that each MVA report cost \$5.00 pursuant to N.J.S.A. 39:4-131. Ms. Monbleau added that the Township of Lacey Police Department (“LPD”) had been administering the law incorrectly in response to similar OPRA requests previously submitted by the Complainant. Ms. Monbleau stated that once the LPD informed her of the total cost, she would contact the Complainant and await payment by cash or check. Ms. Monbleau also stated that once the Township of Lacey (“Township”) received payment, she would deliver the reports via e-mail.

On March 26, 2018, the Complainant requested guidance and received guidance from the Government Records Council (“GRC”) on the Township’s imposition of a \$5.00 fee for copies of MVA reports. On March 27, 2018, the Complainant e-mailed Ms. Monbleau, stating that based upon the GRC’s guidance, the Township was overcharging him for copies of the reports, and that if the Township continued to request payment, he would file a complaint with the GRC. On March

¹ No legal representation listed on record.

² Represented by Lauren Staiger, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.A. (Lakewood, 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.

28, 2018, Ms. Monbleau responded to the Complainant, stating that the matter had been turned over to legal counsel for further clarification.

On April 2, 2018, the Complainant replied to Ms. Monbleau, stating that the GRC was the authority on the matter, and that Ms. Monbleau has seven (7) business days to respond. That same day, Ms. Monbleau responded to the Complainant stating that the matter was under review by counsel and until the Township received guidance, the records would remain withheld.

On April 2, 2018, the Complainant responded to Ms. Monbleau, stating that he would contact the GRC again, and that the Township did not have an “open ended” time frame to conduct a review.

Denial of Access Complaint:

On August 1, 2018, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant asserted that the Township refused to release the MVA reports unless he paid the \$5.00 per report fee under N.J.S.A. 39:4-131. The Complainant asserted that the imposition of the fee was unlawful and referred to his correspondence with Ms. Monbleau and with the GRC.

Statement of Information:

On August 29, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 23, 2018. The Custodian certified that Ms. Monbleau responded in writing on her behalf on March 26, 2018 stating that a \$5.00 fee will be charged for each report, and that the records would not be disclosed until the Township received payment.

The Custodian argued that the MVA reports were governed by N.J.S.A. 39:4-131, quoting in part: “[i]f copies of reports are requested other than in person, an additional fee of up to \$5.00 may be added to cover the administrative costs of the report.” The Custodian argued that the Complainant submitted the request via facsimile and that the fees imposable under N.J.S.A. 39:4-131 applied. The Custodian contended that the Complainant refused to pay the fee, and therefore the Township withheld the records.

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 states that: “[a] *copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation . . .*” N.J.S.A. 47:1A-5(b) (emphasis added).

Additionally, OPRA provides for the recognition of fees imposed by law or regulation:

Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record in the form of printed matter shall not exceed the following:

- \$0.05 per letter size page or smaller, and
- \$0.07 per legal size page or larger.

[N.J.S.A. 47:1A-5(b) (emphasis added).]

New Jersey’s Motor Vehicles and Traffic Regulation states in part:

Every citizen of this State shall have the right, during regular business hours and under supervision, to inspect and copy such reports and shall also have the right in person to purchase copies of the [MVA] reports at the same fee established by [OPRA]. *If copies of reports are requested other than in person, an additional fee of up to \$5.00 may be added to cover the administrative costs of the report . . .*

[N.J.S.A. 39:4-131 (emphasis added).]

In Donato v. Jersey City Police Dep’t, GRC Complaint No. 2005-251 (April 2007), the custodian responded stating that the fees for copies of accidents reports when mailed to a requestor is \$5.00 pursuant to N.J.S.A. 39:4-131; however, if the complainant received the reports in person, the fees set forth in N.J.S.A. 47:1A-5(b) apply. The GRC held that the fee imposed pursuant to N.J.S.A. 39:4-131 in instances where a request for accident reports was not made in person is appropriate under OPRA.

In Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007), the complainant requested copies of MVA reports via facsimile. The custodian imposed a fee of \$5.00 per MVA report in addition to the copying cost afforded under N.J.S.A. 47:1A-5(b). The GRC contemplated its previous holding in Donato, finding that “. . . the provisions of OPRA do not abrogate the provisions of N.J.S.A. 39:4-131. Consequently, the Custodian has lawfully charged the Complainant \$40.25 for the requested [MVA] reports pursuant to N.J.S.A. 39:4-131.” [Id.]

In the instant matter, the Custodian argued that because the Complainant submitted his request by facsimile, the Township was authorized under N.J.S.A. 39:4-131 to charge up to \$5.00 for a copy of each MVA report. The Complainant asserted that because he requested electronic delivery via e-mail, he should not be charged the fee under OPRA. However, N.J.S.A. 47:1A-5(b) provides that an agency may charge for a copy of a government record when prescribed by law or regulation, notwithstanding OPRA’s enumerated costs for duplication. Thus, whether a complainant requests electronic delivery of a government record is inapposite to whether a fee can

be imposed for a copy of said record pursuant to law or regulation. Id. Since the evidence of record demonstrates that the Complainant submitted his request for MVA reports via facsimile and not in person, the provisions of N.J.S.A. 39:4-131 permit the Custodian to charge up to \$5.00 for each report. See Donato, GRC 2005-251; and Truland, GRC 2006-88.

Therefore, the Custodian lawfully denied access to the Complainant's March 23, 2018 OPRA request seeking MVA reports. N.J.S.A. 47:1A-6. Specifically, the Custodian lawfully charged the Complainant \$5.00 per copy of each MVA report pursuant to N.J.S.A. 47:1A-5(b) and N.J.S.A. 39:4-131, since the Complainant did not submit his request in person. See Donato, GRC 2005-251; and Truland, GRC 2006-88.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's March 23, 2018 OPRA request seeking motor vehicle accident reports. N.J.S.A. 47:1A-6. Specifically, the Custodian lawfully charged the Complainant \$5.00 per copy of each motor vehicle accident report pursuant to N.J.S.A. 47:1A-5(b) and N.J.S.A. 39:4-131, since the Complainant did not submit his request in person. See Donato v. Jersey City Police Dep't, GRC Complaint No. 2005-251 (April 2007); and Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007).

Prepared By: Samuel A. Rosado
Staff Attorney

April 21, 2020