



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

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**January 26, 2021 Government Records Council Meeting**

Nancy Gomes  
Complainant

Complaint No. 2019-205

v.

City of Linden (Union)  
Custodian of Record

At the January 26, 2021 public meeting, the Government Records Council (“Council”) considered the January 19, 2021 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 Complainants’ OPRA request seeking non-Civil Service Commission job descriptions including “additional duties and responsibilities.” 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 26<sup>th</sup> Day of January 2021

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: January 28, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 26, 2021 Council Meeting**

**Nancy Gomes<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-205**

v.

**City of Linden (Union)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of a list of job duties (not from the Civil Service Commission (“CSC”)), with the “additional duties and responsibilities,” for each employee identified in the personnel report at the April 16, 2019 Council meeting.<sup>3</sup>

**Custodian of Record:** Jennifer Honan  
**Request Received by Custodian:** June 10, 2019  
**Response Made by Custodian:** June 12, 2019  
**GRC Complaint Received:** October 8, 2019

**Background<sup>4</sup>**

**Request and Response:**

On June 10, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian forwarded the OPRA request to the Appointing Authority Joe Bodek, Personnel Officer Jessica Sheehy, and Labor Relations Specialist Allan Roth. On June 12, 2019, Ms. Sheehy e-mailed the Custodian stating that no records existed. On the same day, Mr. Bodek informed the Custodian that no records existed. On the same day, Mr. Roth e-mailed the Custodian stating that to the extent that the Complainant was seeking job descriptions “authored by the City,” none existed. Mr. Roth further stated that no written additional job descriptions existed.

On June 12, 2019, the Custodian responded in writing stating that no responsive records existed. On June 13, 2019, the Complainant e-mailed the Custodian disputing that no records existed. The Complainant noted that at that meeting, someone asked for the information, to which Mr. Roth replied that he did not have it “with [him] today.” The Complainant argued that Mr Roth

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Daniel Antonelli, Esq. (Linden, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</sup> 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.

either made a false statement at the meeting or was now making a false statement that no records exist. The Complainant further contended that she knew “for a *fact*” that at least two (2) of the thirty (30) employees listed in the personnel report had “a listing (written documentation) of their job duties.” (Emphasis in original).

#### Denial of Access Complaint:

On October 8, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian knowingly and willfully denied her access to records that are specifically disclosable under N.J.S.A. 47:1A-10.

#### Statement of Information:<sup>5</sup>

On December 11, 2020, the Custodian filed a Statement of Information (“SOI”) attaching a legal certification from Mr. Bodek. The Custodian certified that she received the Complainant’s OPRA request on June 10, 2019. The Custodian certified that her search included sending the request to the Mr. Bodek, Ms. Sheehy, and Mr. Roth. The Custodian affirmed that all three (3) individuals responded that they did not maintain any responsive records. Bodek Cert. ¶ 1. The Custodian certified that she responded in writing on June 12, 2019 denying the OPRA request because no records existed.

The Custodian contended that she lawfully denied access to the subject OPRA request because no records existed. The Custodian asserted that the attached communications from Mr. Bodek, Ms. Sheehy, and Mr. Roth support her position.

### 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). In the matter before the Council, the Complainant’s OPRA request sought non-CSC job descriptions including “additional duties and responsibilities.” The Custodian responded stating that no records existed. The Custodian subsequently certified to this fact in the SOI and included a legal certification from Mr. Bodek to that effect. The Custodian also included e-mails from Ms. Sheehy and Mr. Roth confirming that they did not locate any responsive records. Further, the Complainant did not provide any evidence to support her assertion that she is

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<sup>5</sup> On October 30, 2019, this complaint was referred to mediation. On July 24, 2020, this complaint was referred back to the GRC for adjudication.

aware of at least two (2) responsive records. Thus, the GRC is persuaded that the Custodian lawfully denied access to the requested non-CSC job descriptions.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainants' OPRA request seeking non-CSC job descriptions including "additional duties and responsibilities." 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 her burden of proof that she lawfully denied access to the Complainants' OPRA request seeking non-Civil Service Commission job descriptions including "additional duties and responsibilities." 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: Frank F. Caruso  
Executive Director

January 19, 2021