



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 26, 2022 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2020-116

v.

Berkeley Township (Ocean)
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 19, 2022 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 evidence of record reveals the Custodian did not unlawfully overcharge the Complainant because an entire .pdf file had to be printed to provide for appropriate redactions and the Custodian properly charged the Complainant \$4.25, which represents eighty-five (85) letter size pages at \$0.05 per page. N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011).

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 26th Day of April 2022

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 28, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2022 Council Meeting**

Scott Madlinger¹
Complainant

GRC Complaint No. 2020-116

v.

Berkeley Township (Ocean)²
Custodial Agency

Records Relevant to Complaint: Via e-mail “*Copies of all itemized phone bills from Verizon Wireless during the time period of January 01, 2020-May 27, 2020 for these lines:*”

9 PHONE 250-775-674-0001-40 1,635.88 0-01-31-430-000-076 B Telephone Charges R 05/01/20
05/12/20 732-269-6600

13 PHONE 656-083-329-0001-06 Y 1,061.70 0-01-31-430-000-076 B Telephone Charges R
05/11/20 05/12/20 732-244-8762.” (Emphasis in original.)

Custodian of Record: Karen Stallings

Request Received by Custodian: May 27, 2020

Responses Made by Custodian: June 2, 2020, June 8, 2020

GRC Complaint Received: June 9, 2020

Background³

Request and Responses:

On May 27, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 2, 2020, the fourth (4th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the responsive record consists of eighty-five (85) pages that would have to be reduced to paper in order to redact telephone numbers. The Custodian informed the Complainant that the cost would be \$0.05 per page, for a total cost of \$4.25. The Custodian cited Livecchia v. Borough of Mt. Arlington, 412 N.J. Super. 24 (App. Div. 2011) and Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-9 (Interim Order April 8, 2010). On June 8, 2020, the

¹ No legal representation listed on record.

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

Complainant remitted payment. Later that same day, the Custodian disclosed the requested records to the Complainant via e-mail.

Denial of Access Complaint:

On June 9, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he made a request for Verizon Wireless cell phone bills to be e-mailed to him. The Complainant further stated that he received a response that there are eighty-five (85) pages that must be reduced to paper for redactions at a cost of \$4.25. The Complainant stated that he mailed a check for the assessed amount and subsequently received the requested records via e-mail. The Complainant stated that he received eighty-five (85) pages, but only forty-four (44) of the pages contain redactions. The Complainant asserted that he should only have been charged \$2.20 for the forty-four (44) redacted pages.

Statement of Information:

On June 17, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 27, 2020. The Custodian certified that, upon receiving the request, she forwarded it to the Finance Department because they maintain the requested records. The Custodian certified that the Finance Department subsequently e-mailed to her the responsive record as one unredacted .pdf scanned file, and the entire file had to be reduced to paper so that she could redact the telephone numbers. The Custodian certified that the Township does not own or use redaction software. The Custodian certified that she printed the .pdf and removed twenty-three (23) blank pages. The Custodian further certified that she then responded to the request on June 2, 2020, informing the Complainant that a fee was necessary to make copies to redact the records. The Custodian certified that she also informed the Complainant of the statutory reason necessitating redactions. The Custodian certified that on June 8, 2020, the Complainant remitted the copying fee and that she e-mailed the requested records to the Complainant on that same date.

Additional Submissions:

On June 17, 2020, the GRC e-mailed the Custodian’s Counsel seeking clarification of the SOI received earlier this date. The GRC informed Counsel that it is not clear in the SOI why the entire .pdf document sent from the Finance Office had to be printed in order to redact select pages. The GRC asked Counsel to have the Custodian clarify the issue in the form of a certification.

On June 17, 2020, the Custodian e-mailed the GRC to explain that the Finance Office e-mailed her the requested bills as one (1) .pdf file. The Custodian stated that she could not print out and redact select pages. The Custodian did not put her response in the form of a certification as had been requested.

On September 17, 2021, the GRC forwarded to the Custodian’s Counsel a request for additional information regarding the Township’s ability to manipulate .pdf files. Specifically, the GRC asked (1) whether Berkeley Township had a subscription or access to a software program that allows them to edit and manipulate .pdf files, and (2) whether the Custodian had the ability to

individually print each page requiring redaction and reinsert the redacted page back into the .pdf in place of the original.

On October 6, 2021, the Custodian's Counsel forwarded a certification from the Custodian. The Custodian certified that she does not have .pdf editing software or access to a computer that has such software. The Custodian further certified that she does not have software capable of reinserting a page back into a .pdf document or access to a computer that does.

Analysis

Copying Costs

OPRA provides that “the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$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). Moreover, OPRA provides that providing access to records electronically “shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.” Id.; see also McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (Interim Order dated April 8, 2010). However, the foregoing does not necessarily mean that a custodian can never charge for electronic delivery unless supplies are involved. For example, the Council has also previously held that a custodian could charge a per-page copy cost for redacted records if the agency did not have ability to electronically redact same. Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, it follows that requestors seeking records electronically may be subject to the imposition of actual costs for duplication of records. N.J.S.A. 47:1A-5(b)-(c).

Here, the Complainant did not allege the Custodian unlawfully denied him access to the requested records, or portions thereof, but rather that he was overcharged for the records that were disclosed in response to his request. The Complainant asserted that the Custodian did not need to make paper copies of all eighty-five (85) pages of the .pdf file because redactions were only made to forty-four (44) of those pages. The Complainant asserted that he should only have been charged \$2.20 for the forty-four (44) redacted pages.

The Complainant's allegations would be accurate if the Custodian had access to software that would allow manipulation of a .pdf file. In such a case, the Custodian could print only those pages requiring redaction, make the redactions, then replace the unredacted page with a redacted page in the file. However, the Custodian certified she did not have access to such editing software; therefore, she could not manipulate the .pdf file in such a manner. Lacking such capability necessitated printing the entire .pdf file which yielded eighty-five (85) pages containing content, notwithstanding the fact that only forty-four (44) of the pages required redactions. The Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Thus, in keeping with the Council's prior finding in Paff, GRC 2010-09, the charged copying cost was appropriate in this instance.

Accordingly, the evidence of record reveals the Custodian did not unlawfully overcharge the Complainant because an entire .pdf file had to be printed to provide for appropriate redactions

and the Custodian properly charged the Complainant \$4.25, which represents eighty-five (85) letter size pages at \$0.05 per page. N.J.S.A. 47:1A-5(b); Paff, GRC 2010-09.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the evidence of record reveals the Custodian did not unlawfully overcharge the Complainant because an entire .pdf file had to be printed to provide for appropriate redactions and the Custodian properly charged the Complainant \$4.25, which represents eighty-five (85) letter size pages at \$0.05 per page. N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011).

Prepared By: John E. Stewart
Staff Attorney

April 19, 2022