



State of New Jersey

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

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

March 26, 2024 Government Records Council Meeting

Peter O'Reilly
Complainant

Complaint No. 2021-173

v.

Borough of Lawnside (Camden)
Custodian of Record

At the March 26, 2024 public meeting, the Government Records Council ("Council") considered the March 19, 2024 Supplemental 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 Council dismiss the complaint because the Complainant, Peter O'Reilly, withdrew the complaint via e-mail to Tracey A. Thomas, Judicial Support Specialist at the Office of Administrative Law, on February 6, 2024. Therefore, no further adjudication is required.

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 March 2024

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 1, 2024



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
March 26, 2024 Council Meeting**

**Peter O'Reilly¹
Complainant**

GRC Complaint No. 2021-173

v.

**Borough of Lawnside (Camden)²
Custodial Agency**

Records Relevant to Complaint:

“Transactions concerning your tax lien certificates, tax lien subsequent and redemption payments, tax lien holders for all tax sale certificates issued from January 1, 2000 to [June 5, 2021].

More specifically, I request an export (copy) of three database tables’ records contained in your Edmunds Gov Tech financial accounting system. The three tables are:

1. txInmast
2. txIntrans
3. txInholder”³

Custodian of Record: Marsharee A. Wright

Request Received by Custodian: June 5, 2021

Response Made by Custodian: July 6, 2021 and July 28, 2021

GRC Complaint Received: July 28, 2021

Background

October 3, 2023 Council Meeting:

At its October 3, 2023 public meeting, the Government Records Council (“Council”) considered the September 26, 2023 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, found that:

[B]ased on the inadequate and conflicting evidence in this matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Thus, this complaint should be referred to the Office of Administrative Law for a hearing to

¹ No legal representation listed on record.

² Represented by Darryl C. Rhone, Esq., of CGO Law PC (Sewell, NJ).

³ The Complainant stated his preferred means of delivery is an electronic copy of the three files contained in a single ZIP file.

resolve the facts and fully develop the record. Semprevivo v. Pinelands Reg’l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008). Also, this complaint should be referred to the Office of Administrative Law for (1) a determination of whether the Borough uses the Edmunds system as part of their municipal tax management; (2) if (1) is unfounded, then a finding of whether the Camden County Board of Taxation creates and maintains the records on behalf of the Borough; (3) if records responsive to the request are found to be lawfully disclosable under (1) or (2) above, then provide for disclosure to the Complainant of all records determined to have been unlawfully denied; (4) any additional actions necessary to fully develop the record. Further, for purposes of efficacy, the Office of Administrative Law should determine whether the Custodian, or any other official, knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

Procedural History:

On October 5, 2023, the Council distributed its October 3, 2023 Interim Order to all parties. On December 19, 2023, the complaint was transmitted to the Office of Administrative Law (“OAL”). On February 6, 2024, the Complainant, Peter O’Reilly, withdrew the complaint via e-mail to Tracey A. Thomas, Judicial Support Specialist at the Office of Administrative Law. On February 14, 2024, the OAL transmitted the complaint back to the GRC marked “WITHDRAWAL.”

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint because the Complainant, Peter O’Reilly, withdrew the complaint via e-mail to Tracey A. Thomas, Judicial Support Specialist at the Office of Administrative Law, on February 6, 2024. Therefore, no further adjudication is required.

Prepared By: John E. Stewart

March 19, 2024



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

INTERIM ORDER

October 3, 2023 Government Records Council Meeting

Peter O'Reilly
Complainant

Complaint No. 2021-173

v.

Borough of Lawnside (Camden)
Custodian of Record

At the October 3, 2023 public meeting, the Government Records Council (“Council”) considered the September 26, 2023 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 based on the inadequate and conflicting evidence in this matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Thus, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts and fully develop the record. Semprevivo v. Pinelands Reg'l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008). Also, this complaint should be referred to the Office of Administrative Law for (1) a determination of whether the Borough uses the Edmunds system as part of their municipal tax management; (2) if (1) is unfounded, then a finding of whether the Camden County Board of Taxation creates and maintains the records on behalf of the Borough; (3) if records responsive to the request are found to be lawfully disclosable under (1) or (2) above, then provide for disclosure to the Complainant of all records determined to have been unlawfully denied; (4) any additional actions necessary to fully develop the record. Further, for purposes of efficacy, the Office of Administrative Law should determine whether the Custodian, or any other official, knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

Interim Order Rendered by the
Government Records Council
On The 3rd Day of October 2023

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: October 5, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 3, 2023 Council Meeting**

Peter O'Reilly¹
Complainant

GRC Complaint No. 2021-173

v.

Borough of Lawnside (Camden)²
Custodial Agency

Records Relevant to Complaint:

“Transactions concerning your tax lien certificates, tax lien subsequent and redemption payments, tax lien holders for all tax sale certificates issued from January 1, 2000 to [June 5, 2021].

More specifically, I request an export (copy) of three database tables’ records contained in your Edmunds Gov Tech financial accounting system. The three tables are:

1. txlnmast
2. txlntrans
3. txlnholder”³

Custodian of Record: Marsharee A. Wright

Request Received by Custodian: June 5, 2021

Response Made by Custodian: July 6, 2021 and July 28, 2021

GRC Complaint Received: July 28, 2021

Background⁴

Request and Responses:

On June 5, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant stated that if the Borough of Lawnside (“Borough”) informs him that they do not use the Edmunds system, he would consider his request fulfilled. Attached to the OPRA request was a document titled *Edmunds/Tax Lien Data Export Instructions for OPRA Request*. On July 6, 2021, the Custodian

¹ No legal representation listed on record.

² Represented by Darryl C. Rhone, Esq., of CGO Law PC (Sewell, NJ).

³ The Complainant stated his preferred means of delivery is an electronic copy of the three files contained in a single ZIP file.

⁴ 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.

responded by informing the Complainant that after reviewing the request with her solicitor, she determined that the request must be submitted to the Camden County Board of Taxation (“Board”).

On July 6, 2021, the Complainant e-mailed the Custodian in reply to the Custodian’s response to his request. The Complainant asked the Custodian to inform him if the Borough does not use Edmunds GovTech (“Edmunds”). The Complainant stated that if the Borough does use Edmunds, then he wants the requested records to be disclosed to him.

On July 28, 2021, the Custodian e-mailed a letter to the Complainant informing him that his request item number 1 can be retrieved from the Board. The Custodian further informed the Complainant that to fulfill request items number 2 and 3, the Borough would have to assess a special service charge of \$6,720.00. The Custodian attached a copy of the “Special Service Charge 14-Point Analysis” from the GRC’s website with handwritten responses.⁵ The Custodian informed the Complainant that he must remit \$3,360.00 to the Borough before the Custodian would commence work on his request.

By reply e-mail dated July 28, 2021, the Complainant reiterated that if the Custodian informs him that the Borough does not use the Edmunds system, he will consider his request satisfied. The Complainant informed the Custodian that if the Borough does use Edmunds, “. . . then I am asking for ELECTRONIC records (not paper). I do not want paper. I am asking specifically for ‘DATA SETS STORED IN A DATABASE’.” (Emphasis in original.) The Complainant informed the Custodian that the records requested are plain text ASCII files which can be viewed in various text editor programs. The Complainant stated that he provided instructions to assist the Custodian in obtaining the requested records, and that the Custodian can also obtain assistance from Edmunds Support. The Complainant stated that hundreds of municipalities in New Jersey that use Edmunds for tax collection have successfully responded to the same OPRA request.

Denial of Access Complaint:

On July 28, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he filed his OPRA request on June 5, 2021, and he received a reply to his request from the Custodian on July 6, 2021. The Complainant stated that the Custodian incorrectly referred him to the Board website. The Complainant stated that on that same date, he responded back to the Custodian, informing her that the records are stored and maintained by the Borough.

The Complainant stated that on July 28, 2021, the Custodian e-mailed two attachments to him. One attachment was a letter detailing an estimated special service charge, and the other attachment was a breakdown of the costs. The Complainant stated that on that same date he e-mailed the Custodian, informing her that he requested electronic files which should take a few minutes to prepare for disclosure. The Complainant stated that shortly after he transmitted the e-mail to the Custodian, the Custodian called him. The Complainant alleged that the Custodian

⁵ It is clear from the responses to the 14-Point Analysis that the Custodian was seeking a special service charge for preparation of paper copies of the records.

chastised him and told him that she does not care how other municipalities were able to complete the same OPRA request. The Complainant alleged that before he could reply to the Custodian, she hung up. The Complainant stated that he called her back, but before he could speak, she immediately hung up.

Statement of Information:

On August 26, 2021, the Custodian filed a Statement of Information (“SOI”).⁶ The Custodian certified that she received the Complainant’s OPRA request on June 5, 2021, and responded to the request on July 6, 2021.

The Custodian certified that the Borough, being a municipality populated by less than 2,900, does not maintain a staffed tax office. The Custodian certified that the Borough “. . . instead contracts with a tax assessor and certified tax collector - who creates and maintains certain “*government records*” on behalf of the Borough . . .” (Emphasis in original.) The Custodian certified that, as part of her search for responsive records, she contacted the contracted certified tax collector. The Custodian further certified that “[t]he tax collector informed [her] that she does maintain those records in the format requested on behalf of the Borough.” The Custodian certified that the “[t]ax records as sought in this matter are maintained on behalf of the Borough by the County Tax Administrator and certified tax collector to the extent necessary for the Borough’s Certified Tax Collector, Ms. Kathleen Andress, to complete her statutory duties to the Borough.”⁷ However, the Custodian also certified that the lawful duties of the certified tax collector do not include “. . . maintaining and providing tax records in formats and file formats specifically sought by [the Complainant].”

The Custodian certified that the Complainant “. . . ‘specifically’ seeks three database tables as contained in the Edmunds Gov Tech financial accounting system; referenced by filename as : (1) txlnmast, (2) txlntrans, and (3) txlnholder [‘filenames’].” The Custodian certified that if these records were available, they would have been provided to the Complainant as electronic records. However, the Custodian certified that, “[t]he Borough does not maintain the three filenames as government records in the course of their official business . . . [m]oreover, the contracted Certified Tax Collector, does not maintain these items on behalf of the Borough as requested and lacks such access to the file formats as indicated – with the Borough only able to provide paper copies . . .” The Custodian certified that she offered to provide paper copies to the Complainant, and that “[a] special service charge was assessed as . . . hard copies being the only

⁶ The GRC transmitted the request for the SOI to the Custodian on July 30, 2021. On August 2, 2021, the Custodian’s Counsel put his appearance on record and indicated to the GRC that the Borough and the Complainant were entering negotiations in an effort to resolve the complaint. The GRC was copied on e-mails indicating that the parties were in the process of negotiating a resolution of the complaint; however, it appears that negotiations, if any, broke down on or about August 14, 2021. There is a communication in the evidence of record indicating that the GRC was facilitating a mediation process; however, the GRC was not mediating or facilitating mediation of the complaint, as the Complainant elected not to mediate the complaint.

⁷ It is unclear whether Ms. Andress is a Borough employee or an independent contractor because the Custodian certified that the Borough does not maintain a staffed tax office.

record maintained by the Borough.” The Custodian certified that the Complainant rejected “the available record format” and immediately filed a complaint.⁸

The Custodian certified that she attempted to fulfill the Complainant’s request by referring him to the Board where the records are maintained on behalf of the Borough, but the Complainant rejected her referral. The Custodian also certified that “[t]he Complainant rejected my forwarding of him to the regular maintainer of the records,” so she “. . . reached out to the tax assessor and was informed by the assessor that the tax assessor would be able to obtain only print-outs of the requested records . . .” The Custodian certified that on July 28, 2021, she e-mailed the Complainant a letter informing him that she could disclose printouts of the requested records, together with a “Special Service Charge Form.” The Custodian certified that on that same date the Complainant sent her a reply e-mail, rejecting receipt of the records in printout format.

The Custodian attached to the SOI a certification from Kathleen Andress. Ms. Andress certified that she has been the appointed Tax Collector of the Borough of Lawnside since July of 2013. Ms. Andress certified that although she does not use records as requested by the Complainant, the Camden County Tax Administrator is the custodian of the tax list on behalf of the Borough. Ms. Andress certified that the remaining items requested by the Complainant are not made and maintained by the Borough in the requested format; therefore, the items would only be available in hardcopy.

The Custodian certified that by filing the within complaint, the Complainant instituted “unfounded litigation.” The Custodian asked the GRC to dismiss the complaint for lack of merit.

Analysis

Inadequate and Conflicting Evidence of Record

In Semprevivo v. Pinelands Reg’l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008), the GRC requested that the custodian provide information to the GRC which was missing from the custodian’s SOI. In reply, the custodian forwarded to the GRC three Board policies that the custodian said would provide the legal basis for the custodian to deny the complainant access to requested Board records. The GRC found that because there was inadequate evidence for the Council to render a meaningful decision in the matter, the complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts.

Here, it is clear from the Complainant’s OPRA request that he believes the Borough uses Edmunds financial accounting system as part of their municipal tax management because he sought copies of three (3) Edmunds electronic files. However, the Complainant stated in (1) the OPRA request; (2) an e-mail dated July 6, 2021; and (3) an e-mail dated July 28, 2021, that if the

⁸ The Custodian estimated a special service charge of \$6,720.00 for provision of paper copies to the Complainant; however, the Complainant made it clear in his OPRA request and subsequent correspondence to the Custodian that he did not want paper copies of the records.

Borough responded that they did not use the Edmunds system, he would consider his request satisfied.

If the Borough did not use Edmunds, the Custodian could have simply notified the Complainant of that fact; however, the Custodian declined to do so. Instead, the Custodian referred the Complainant to the Board for fulfillment of the request. If the Board was creating and maintaining the records on behalf of the Borough, as the Custodian certified in the SOI, she did not provide the Complainant with a reason why she would not or could not obtain the requested records from them pursuant to Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).

If the Board does create and maintain the requested records on behalf of the Borough, the GRC must question precisely which records responsive to the request are maintained by them. The Custodian in her July 28, 2021 response informed the Complainant that request item number 1 can be retrieved from the County Board of Taxation. This statement was also confirmed by Ms. Andress in her certification attached to the SOI. The Custodian in the same response stated that request items number 2 and 3 would only be available as printouts, requiring a special service charge. However, if the Board has request item number 1 available in Edmunds file format, it seems likely that the other requested Edmunds “txln” files would also be available. This issue was never clarified by the Custodian in the SOI.

Moreover, the Custodian made certain conflicting statements in the SOI. The Custodian certified that the Borough does not maintain a staffed tax office. Then subsequently, the Custodian certified that Kathleen Andress is the “Borough’s Certified Tax Collector.”⁹ The Custodian also certified that the tax collector informed her that she (the tax collector) does maintain the requested records in the format requested by the Complainant. However subsequently, the Custodian certified that the duties of the tax collector do not include maintaining and providing tax records in formats sought by the Complainant.

The Custodian must first definitively state whether the Borough uses the Edmunds system as part of their municipal tax management. As a means of resolving the request, the Complainant asked the Custodian on three (3) separate occasions to advise him if the Borough uses Edmunds, but the Custodian failed to do so. If the Borough does use Edmunds, the records must be disclosed unless the Custodian provides a lawful reason for not providing access to the records; if the Borough does not use Edmunds, the nexus between the Board, as the maintainer of the records, and the Borough must be established. And if the Board does create and maintain the records *on behalf of* the Borough, those records should be obtained and disclosed by the Custodian unless otherwise exempt from access. Clarification of these issues would better lend themselves to testimonial evidence, rather than a written response to a request for additional information from the Custodian. As such, it is necessary to refer the complaint to the OAL for a hearing to develop the record.

⁹ This latter statement appears to be the case because the Borough on its website lists as part of its municipal staff a Tax Assessor, Tax Collector, Deputy Tax Collector and Tax Clerk. See [Tax Collector | Lawnside NJ](#), accessed September 19, 2023. Moreover, Ms. Andress, in a separate certification attached to the SOI, certified that she was “appointed” as the Borough’s Tax Collector in July of 2013.

Therefore, based on the inadequate and conflicting evidence in this matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Thus, this complaint should be referred to the OAL for a hearing to resolve the facts and fully develop the record. Semprevivo, GRC 2007-135. Also, this complaint should be referred to the OAL for (1) a determination of whether the Borough uses the Edmunds system as part of their municipal tax management; (2) if (1) is unfounded, then a finding of whether the Board creates and maintains the records on behalf of the Borough; (3) if records responsive to the request are found to be lawfully disclosable under (1) or (2) above, then provide for disclosure to the Complainant of all records determined to have been unlawfully denied; (4) any additional actions necessary to fully develop the record. Further, for purposes of efficacy, the OAL should determine whether the Custodian, or any other official, knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that based on the inadequate and conflicting evidence in this matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Thus, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts and fully develop the record. Semprevivo v. Pinelands Reg'l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008). Also, this complaint should be referred to the Office of Administrative Law for (1) a determination of whether the Borough uses the Edmunds system as part of their municipal tax management; (2) if (1) is unfounded, then a finding of whether the Camden County Board of Taxation creates and maintains the records on behalf of the Borough; (3) if records responsive to the request are found to be lawfully disclosable under (1) or (2) above, then provide for disclosure to the Complainant of all records determined to have been unlawfully denied; (4) any additional actions necessary to fully develop the record. Further, for purposes of efficacy, the Office of Administrative Law should determine whether the Custodian, or any other official, knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

Prepared By: John E. Stewart

September 26, 2023