



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

May 31, 2022 Government Records Council Meeting

Walter H. Barger, Sr. & Judy L. Gantz
Complainant
v.
County of Burlington
Custodian of Record

Complaint No. 2021-215

At the May 31, 2022 public meeting, the Government Records Council (“Council”) considered the May 24, 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 to prevent the unnecessary expenditure of administrative costs by the GRC in pursuing this matter, said complaint should be dismissed because the Complainants abandoned the complaint. Specifically, the Complainants failed to respond to the GRC’s correspondence after Complainant’s Counsel withdrew as representation and as a party to the matter. See Swindell v. N.J. Dep’t of Env’tl. Prot. and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993). See also Siddeeq v. N.J. Dep’t of Corr., GRC Complaint No. 2009-182 and 2009-183 (November 2009), and Taylor v. N.J. Dep’t of Corr., GRC Complaint No. 2010-319 (November 2009).

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 31st Day of May 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: June 2, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

**Walter H. Barger, Sr. & Judy L. Gantz¹
Complainant**

GRC Complaint No. 2021-215

v.

**County of Burlington²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail:

1. The identity, including name, police department affiliation, address, and badge numbers of all officers present on the scene.
2. [A]ll unedited/unredacted body camera videos of all police officers and other law enforcement personnel present at the scene.
3. [A]ny/all warrants issued for the events of March 1, 2021 at the scene.
4. [A]ny/all writings which deal with or address in any way the subject incident, including but not limited to, all writings which purport to give any police officer or any other law enforcement personnel who were present on the subject date the authority to break in and enter the victims home, detain the victims, arrest the victims, and assault Walter Barger, Sr.

Custodian of Record: Ashley Godfrey

Request Received by Custodian: May 11, 2021

Response Made by Custodian: May 11, 2021

GRC Complaint Received: September 7, 2021

Background³

Request and Response:

On May 11, 2021, Complainant's Counsel submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing, deny the request as seeking information or asking questions and did not identify specific government records. New Jersey Builders Ass'n v. New Jersey Council

¹ No representation listed on record. Previously represented by Mitchell Lee Goldfield, Esq., Attorney at Law (Gibbsboro, NJ).

² Represented by Brian E. Turner, Esq., of Malamut & Associates, LLC (Cherry Hill, 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.

on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian also stated that the Burlington County Sheriff's Office was not involved in the March 1, 2021 incident and therefore were no documents made, maintained, or kept on filed by the County of Burlington ("County").

Denial of Access Complaint:

On September 7, 2021, Complainant's Counsel filed a Denial of Access Complaint with the Government Records Council ("GRC"). Complainant's Counsel asserted that he represented the Complainants who were involved in a break-in of their home and their eventual assault, arrest, and interrogation by several police officers and members of the Burlington County Police Department. Complainant's Counsel asserted that as part of the investigation, he submitted the instant OPRA request to the Burlington County Prosecutor's Office but was denied.

Mediation:

On October 1, 2021, the matter was transferred to mediation. On December 2, 2021, the matter was returned from mediation, with Complainant's Counsel noticing his withdrawal as counsel for the Complainants and as a party to the matter. The matter was thereafter re-captioned to list the Complainants as the sole complaining party.

Statement of Information:

On March 17, 2022, the GRC requested a Statement of Information ("SOI") from the Custodian. That same day, the Custodian's Counsel responded to the GRC, stating that it was his understanding that because Complainant's Counsel withdrew as counsel for the Complainants, the matter would be dismissed.

Additional Submissions:

On April 12, 2022, the GRC e-mailed the Complainants, stating that on December 2, 2021, the Complainant noticed the GRC his withdrawal as counsel and as a party to the matter. The GRC inquired whether the Complainants wished to continuing adjudicating the matter, or if they wished to withdraw. The GRC also provided a deadline of April 20, 2022 to respond.

On April 26, 2022, Custodian's Counsel requested a status update. That same day, the GRC responded to Custodian's Counsel stating that correspondence was sent to the Complainants on April 12, 2022 to determine whether they wished to pursue the instant matter.

On April 29, 2022, the GRC e-mailed the Complainants again, stating that as of that date no response had been received. The GRC stated that the Complainants had until May 6, 2022, or another five (5) business days, to provide notice of whether they wished to pursue the instant matter. The GRC also stated that a failure to timely respond may result in the matter being dismissed as abandoned. As of May 9, 2022, the GRC has not received a response from the Complainants.

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.

In Swindell v. N.J. Dep’t of Env’tl. Prot. and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993), the petitioner appealed the assessment of a penalty pursuant to the Waterfront Development Statute. In response to said appeal, the Office of Administrative Law scheduled a mandatory early settlement conference at which the petitioner failed to appear. In the Administrative Law Judge’s (“ALJ”) Initial Decision, the ALJ found that:

“[a]fter having given petitioner Swindell every opportunity to contact either the deputy attorney general or this tribunal to afford an explanation for his nonappearance and noncontact regarding this matter subsequent to the filing of his appeal, I **FIND** that petitioner Swindell has unilaterally disregarded his obligations in this matter even though it was he who initiated the process in the first instance. In the process, I **FIND** that petitioner Swindell has, for reasons unknown to this tribunal, caused the expenditure of unnecessary funds in order to prepare for a defense of his appeal, as well as the administrative costs generated at the Office of Administrative Law in order to process this matter for the benefit of the parties.”

[Id.]

The New Jersey Department of Environmental Protection accepted the ALJ’s Initial Decision on March 1, 1993.

In the instant matter, Complainant’s Counsel filed a Denial of Access Complaint after submitting an OPRA request to the County. While the matter was in mediation, Complainant’s Counsel notified the GRC that he was no longer representing the Complainants and withdrew as a party to the matter. Thereafter, the GRC reached out to the Complainants twice via e-mail and provided a total of seventeen (17) business days between April 12, 2022 and May 6, 2022 to notify the GRC whether they wished to pursue the matter. The Complainants have failed to respond within that period, and accordingly have abandoned the matter.

Therefore, to prevent the unnecessary expenditure of administrative costs by the GRC in pursuing this matter, said complaint should be dismissed because the Complainants abandoned the complaint. Specifically, the Complainants failed to respond to the GRC’s correspondence after Complainant’s Counsel withdrew as representation and as a party to the matter. See Swindell, supra. See also Siddeeq v. N.J. Dep’t of Corr., GRC Complaint No. 2009-182 and 2009-183

(November 2009), and Taylor v. N.J. Dep't of Corr., GRC Complaint No. 2010-319 (November 2009).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that to prevent the unnecessary expenditure of administrative costs by the GRC in pursuing this matter, said complaint should be dismissed because the Complainants abandoned the complaint. Specifically, the Complainants failed to respond to the GRC's correspondence after Complainant's Counsel withdrew as representation and as a party to the matter. See Swindell v. N.J. Dep't of Env'tl. Prot. and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993). See also Siddeeq v. N.J. Dep't of Corr., GRC Complaint No. 2009-182 and 2009-183 (November 2009), and Taylor v. N.J. Dep't of Corr., GRC Complaint No. 2010-319 (November 2009).

Prepared By: Samuel A. Rosado
Staff Attorney

May 24, 2022