



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 25, 2023 Government Records Council Meeting

Przemyslaw Ryba
Complainant

Complaint No. 2022-648

v.

Township of Toms River (Ocean)
Custodian of Record

At the April 25, 2023 public meeting, the Government Records Council (“Council”) considered the April 18, 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:

1. Because the GRC attempted on two occasions to obtain a completed SOI from the Custodian, the Custodian’s failure to provide a completed SOI to the GRC hindered the GRC’s obligation to “receive, hear, review and adjudicate [the] complaint” pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(g). See Kovacs v. Irvington Police Dep’t (Essex), 2014-196, GRC Complaint No. 2014-196 (January 2015).
2. Because the Custodian failed to assert a legal explanation and/or statutory citation for the denial of access to the notes and photographs sought in the Complainant’s October 25, 2022 and October 31, 2022 OPRA requests, the Custodian shall disclose said records to the Complainant, advise if a valid lawful basis exists for withholding them, or advise that said records do not exist. N.J.S.A. 47:1A-6.
3. Because the Complainant asserted that his November 22, 2022 OPRA request was denied, and the Custodian failed to assert a legal explanation and/or statutory citation for the alleged denial of access, the Custodian shall disclose the requested records to the Complainant, advise if a valid lawful basis exists for withholding them, or advise that the requested records do not exist. N.J.S.A. 47:1A-6.
4. **The Custodian shall comply with Conclusion Nos. 2 and 3 above within ten (10) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 25th Day of April 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: May 1, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 25, 2023 Council Meeting**

Przemyslaw Ryba¹
Complainant

GRC Complaint No. 2022-648

v.

Township of Toms River (Ocean)²
Custodial Agency

Records Relevant to Complaint:

October 25, 2022 Request (Township-assigned request number R018104-102522):

Copies of “[a]ll building dept. records and findings due to complaints to include pictures and investigator notes.”

October 31, 2022 Request (Township-assigned request number R018166-103122):

“SECOND REQUEST. INITIAL REQUEST WAS INCOMPLETE. All building department records and findings due to complaint #V-22-00284 to include all pictures and investigators notes.” (Emphasis in original).

November 22, 2022 Request (Township-assigned request number R018398-112222):

“All building/zoning complaints received against 737 Parkside Avenue, Toms River, NJ 08753.”³

Custodian of Record: Nicole Pomeroy-Grasso

Requests Received by Custodian: October 25, 2022, October 31, 2022 and November 22, 2022

Responses Made by Custodian: October 31, 2022, November 4, 2022 and November 29, 2022

GRC Complaint Received: November 29, 2022

Background⁴

Request and Response:

On October 25, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 31, 2022, the fifth

¹ No legal representation listed on record.

² No legal representation listed on record.

³ This request was not listed on page 2, paragraph 3 of the complaint; however, it was referenced on the Records Denied List and the request and response were attached to the complaint.

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.

(5th) business day following receipt of said request, the Custodian responded in writing assigning a reference number to the request. The Custodian further informed the Complainant that records were located responsive to the request. The Custodian provided the Complainant with a link to retrieve the responsive records.

On October 31, 2022, the Complainant e-mailed the Custodian to ask why his October 25, 2022 OPRA request was only partially fulfilled. The Complainant stated that he had also requested the investigator's notes and photographs.

Requests and Responses:

On October 31, 2022, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On November 4, 2022, the fourth (4th) business day following receipt of said request, the Custodian responded in writing assigning a reference number to the request. The Custodian further informed the Complainant that records were located responsive to the request. The Custodian provided the Complainant with a link to retrieve the responsive records.

On November 22, 2022, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On November 29, 2022, the fourth (4th) business day following receipt of said request, the Custodian responded in writing assigning a reference number to the request. The Custodian further informed the Complainant that records were located responsive to the request. The Custodian provided the Complainant with a link to retrieve the responsive records.

Denial of Access Complaint:

On November 29, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that his October 25, 2022 request was only partially filled because the Custodian failed to disclose the investigator's notes and photographs he requested. The Complainant stated that the Custodian responded in a similar manner to his October 31, 2022 request. The Complainant asserted that the Custodian denied his November 22, 2022 request because she directed him to the same records that the Custodian directed him to in the response to his October 31, 2022 request.

With respect to his October 25, 2022 and October 31, 2022 requests, the Complainant stated that he made follow up telephone calls and e-mailed the Custodian; however, the Custodian did not return his telephone calls or reply to his e-mail. The Complainant further stated that the "Records Department stated that [the Custodian] is not willing to release the records that I requested 2 times."

Statement of Information:

On March 14, 2023, the GRC sent the Custodian a request for the Statement of Information ("SOI"). The Custodian failed to submit the SOI to the GRC.

On March 30, 2023, the GRC sent the Custodian a notice that if the GRC did not receive the SOI within three (3) business days, the complaint would proceed to adjudication based only upon the information contained within the complaint. The Custodian failed to submit the SOI or otherwise respond to the GRC's notice.

Analysis

Failure to Submit SOI

In furtherance of the GRC's obligation to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to government records[.]" pursuant to N.J.S.A. 47:1A-7(b), the GRC requires a custodian to submit a completed SOI. The New Jersey Administrative Code provides:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than 10 business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(g).]

In Kovacs v. Irvington Police Dep't (Essex), 2014-196, GRC Complaint No. 2014-196 (January 2015), the GRC sent two requests to the custodian seeking submission of the SOI; however, the custodian never submitted the SOI. The Council subsequently determined that the custodian violated N.J.A.C. 5:105-2.4(a).

Here, the GRC attempted on March 14, 2023, and again on March 30, 2023, to obtain a completed SOI from the Custodian. However, the Custodian never submitted a completed SOI or otherwise responded to the GRC.

Therefore, because the GRC attempted on two occasions to obtain a completed SOI from the Custodian, the Custodian's failure to provide a completed SOI to the GRC hindered the GRC's obligation to "receive, hear, review and adjudicate [the] complaint" pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(g). See Kovacs, GRC 2014-196.

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.

October 25, 2022 and October 31, 2022 OPRA Requests

Notwithstanding the validity of these two requests, in her response the Custodian stated that records were located responsive to the requests and provided the Complainant with a link so he could retrieve the records. The Complainant stated that, although he asked for investigator's notes and photographs, the Custodian failed to disclose those records. It is clear from the evidence of record that the Custodian did not provide the Complainant with a legal explanation and/or statutory citation for the denial of access to the investigator's notes and photographs.

Therefore, because the Custodian failed to assert a legal explanation and/or statutory citation for the denial of access to the notes and photographs sought in the Complainant's October 25, 2022 and October 31, 2022 OPRA requests, the Custodian shall disclose said records to the Complainant, advise if a valid lawful basis exists for withholding them, or advise that said records do not exist. N.J.S.A. 47:1A-6.

November 22, 2022 OPRA Request

In her response to this request the Custodian stated that records were located responsive to the request and provided the Complainant with a link so he could retrieve the records. The Complainant stated that the records requested were denied because he was directed to the same records that the Custodian directed him to in response to his October 31, 2022 request.

Therefore, because the Complainant asserted that his November 22, 2022 OPRA request was denied, and the Custodian failed to assert a legal explanation and/or statutory citation for the alleged denial of access, the Custodian shall disclose the requested records to the Complainant, advise if a valid lawful basis exists for withholding them, or advise that the requested records do not exist. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the GRC attempted on two occasions to obtain a completed SOI from the Custodian, the Custodian's failure to provide a completed SOI to the GRC hindered the GRC's obligation to "receive, hear, review and adjudicate [the] complaint" pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(g). See Kovacs v. Irvington Police Dep't (Essex), 2014-196, GRC Complaint No. 2014-196 (January 2015).
2. Because the Custodian failed to assert a legal explanation and/or statutory citation for the denial of access to the notes and photographs sought in the Complainant's October 25, 2022 and October 31, 2022 OPRA requests, the Custodian shall disclose said records to the Complainant, advise if a valid lawful basis exists for withholding them, or advise that said records do not exist. N.J.S.A. 47:1A-6.

3. Because the Complainant asserted that his November 22, 2022 OPRA request was denied, and the Custodian failed to assert a legal explanation and/or statutory citation for the alleged denial of access, the Custodian shall disclose the requested records to the Complainant, advise if a valid lawful basis exists for withholding them, or advise that the requested records do not exist. N.J.S.A. 47:1A-6.
4. **The Custodian shall comply with Conclusion Nos. 2 and 3 above within ten (10) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

Prepared By: John E. Stewart

April 18, 2023