



## 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  
Commissioner

### FINAL DECISION

#### July 30, 2024 Government Records Council Meeting

Scott Madlinger  
Complainant

Complaint No. 2022-114

v.

Berkeley Township (Ocean)  
Custodian of Record

At the July 30, 2024 public meeting, the Government Records Council (“Council”) considered the July 23, 2024 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 \$1.05 copying fee assessed by the Custodian and paid by the Complainant for records that were not responsive to the request is unwarranted and unreasonable under OPRA and could have been prevented if the Custodian sought clarification of the request prior to assuming that the records disclosed were responsive, the Custodian shall refund to the Complainant said copying fee. See Leibel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004).
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the Custodian does not comply, 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).**
3. The Custodian did not violate OPRA by assessing a \$2.50 fee to make fifty (50) paper copies of the responsive records to redact social security numbers and the names and birthdates of minors N.J.S.A. 47:1A-5(b). Thus, the Custodian is not required to disclose the responsive records until the Complainant remits the assessed fee and no unlawful denial of access occurred. N.J.S.A. 47:1A-6; Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004) and Cuba v. N. State Prison, GRC Complaint No. 2004-146 (February 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 30<sup>th</sup> Day of July 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: August 1, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 30, 2024 Council Meeting**

**Scott Madlinger<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-114**

v.

**Berkeley Township (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of “all wage executions received by berkeley township (sic) during the time period 01/01/2019-02/23/2022[.]”

**Custodian of Record:** Beverly M. Carle

**Request Received by Custodian:** February 23, 2022

**Response Made by Custodian:** March 4, 2022, March 17, 2022, and March 28, 2022

**GRC Complaint Received:** April 11, 2022

**Background<sup>3</sup>**

**Request and Responses:**

On February 23, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 4, 2022, the Custodian responded in writing to the Complainant’s request informing him that there are twenty-one (21) pages of records responsive to the request which must be reduced to paper for redactions. The Custodian further informed the Complainant that the cost is \$0.05 per page pursuant to OPRA. The Custodian informed the Complainant that once payment of \$1.05 was received, she would begin redacting the documents, and would e-mail the records to the Complainant within seven (7) business days. In a reply e-mail that same date, the Complainant stated, “the wage executions that i see, require no redactions, will be interesting to see what you have (sic)[.]” On March 17, 2022, the Custodian disclosed to the Complainant redacted records that were purportedly responsive to his request. Subsequently, on or about this same date, the Complainant forwarded a copy of a completed Wage Execution to the Berkeley Township (“Township”) Attorney.

On March 28, 2022, the Custodian again responded in writing to the Complainant’s request informing him that his request for “court document wage executions” consists of sixty-five (65)

---

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

<sup>2</sup> No legal representation listed on record.

<sup>3</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.

pages of records, fifty (50) pages of which must be reduced to paper for redactions of social security numbers and names and birthdates of minors. The Custodian further informed the Complainant that the cost is \$0.05 per page pursuant to OPRA. The Custodian informed the Complainant that once payment of \$2.50 was received, she would begin redacting the documents, and would e-mail the records to the Complainant within seven (7) business days. In a reply e-mail that same date, the Complainant stated the Custodian still owed him \$1.05 for disclosed payroll records that he did not request.

#### Denial of Access Complaint:

On April 11, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on March 4, 2022, the Custodian responded to his February 23, 2022 OPRA request informing him that he owes “\$1.05 for 21 pages.” The Complainant stated that he replied that they still owe him a refund, and that the wage executions he has seen do not require redactions. The Complainant further stated that “Karen said my refund will be discussed at next council meeting (it was denied).”

The Complainant stated that on March 17, 2022, payroll records were delivered to him, but he did not request such records. The Complaint stated that he sent a copy of a wage execution document to Lauren Staiger.<sup>4</sup> The Complainant further stated that on March 28, 2022, “Karen sent email (sic) saying I owe \$2.50 for the records. I responded they still owe me the \$1.05 I paid for the ‘payroll records’ that I did not request.” The Complainant stated that the Township will not refund his \$1.05, and that he continues to be denied access to the records he requested.

#### Statement of Information:

On April 21, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 23, 2022, and responded on February 18, 2022,<sup>5</sup> March 4, 2022, March 17, 2022, and March 28, 2022.

The Custodian certified that the Complainant requested wage executions. The Custodian certified that she sent the request to the payroll supervisor and the supervisor “provided what she thought were the responsive documents[.]” The Custodian certified that the records determined to be responsive consisted of a printout from a payroll program listing the employees who had wages garnished, as well as the dates and amount of deductions. The Custodian certified that because the records were determined to be personnel records, pursuant to Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order May 24, 2011), they had to be reduced to paper for redaction. The Custodian certified that in compliance with N.J.S.A. 47:1A-10, the records were redacted such that they would only disclose the employee’s name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received.

---

<sup>4</sup> The transmittal date was not provided; however, the Complainant attached a copy from page 1 of a completed Superior Court of New Jersey Order and Execution Against Earnings form titled **Wage Execution** (bold in original). The document is further identified as form CN 11471 – Appendix XI-J.

<sup>5</sup> No response was made on February 18, 2022, as it predates the date of the request.

The Custodian certified that the Complainant was notified of the copying costs via e-mail dated March 4, 2022. The Custodian attached said e-mail to the SOI as Exhibit 8. The e-mail informed the Complainant that there are twenty-one (21) pages of records responsive to the request which must be reduced to paper to make redactions pursuant to N.J.S.A. 47:1A-10, and the amount due at \$0.05 per page was \$1.05. The Custodian further informed the Complainant in the e-mail that upon receipt of payment, the records would be redacted and disclosed to the Complainant within seven (7) business days.

The Custodian certified that on March 8, 2022, the Complainant questioned whether the records to be disclosed were the records he was seeking but nonetheless paid the copying costs without providing further clarification. The Custodian certified that on March 17, 2022, twenty-one (21) pages of redacted records were disclosed to the Complainant. The Custodian attached to the SOI copies of the disclosed records as Exhibit 8A. The records consist of twenty-one (21) pages of “Deduction/Earning History Detail Report” printouts. The Custodian certified that, “[a]t that time the requestor reached out to the Township attorney clarifying that it was the actual court documents he was requesting.” The Custodian certified that the payroll supervisor was notified that the Complainant was seeking the court documents that were sent to her to make the payroll deductions, and the payroll supervisor then provided those records to the Custodian.

The Custodian certified that she again responded via e-mail to the Complainant’s request on March 28, 2022. The Custodian attached the e-mail to the SOI as Exhibit 10C. The Custodian in the e-mail informed the Complainant that there are sixty-five (65) pages of records responsive to his request, and fifty (50) of the pages must be reduced to paper to make redactions of social security numbers and names and birthdates of minors. The Custodian in the e-mail further informed the Complainant that the amount due at \$0.05 per page totaled \$2.50, and that once payment of \$2.50 was received the records would be redacted and disclosed to the Complainant within seven (7) business days. The Custodian certified that the Complainant has refused to pay the copying charges and pick up the records.

### 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.

OPRA further provides that:

A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, 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).]

Assessed copying fee for disclosure of nonconforming records

In Leibel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004), the custodian sought clarification of the OPRA request from the complainant. The Council subsequently held that “[t]he Custodian is proper in requiring clarification when a request is too broad in scope and a reasonable basis exists to seek said clarification.” Id.

Here, in response to the Complainant’s request the Custodian properly charged \$1.05 to make copies of twenty-one (21) pages of records for redaction purposes. However, after the Custodian collected the copying fee from the Complainant, she disclosed to him heavily redacted “Deduction/Earning History Detail Report” printouts. Although the Complainant objected to receipt of the nonconforming records, and requested a refund of his copying fee payment, the Custodian failed to refund the assessed copying fee.

The Complainant’s OPRA request sought “wage executions *received by* [B]erkeley [T]ownship” during a specified time frame. If the Custodian was in doubt as to the nature of the responsive records, the form of the request should have suggested that the requested records were sent to the Township by an outside entity, and not generated within the Township. Furthermore, the Custodian certified that the payroll supervisor delivered to her what she *thought* were responsive documents. Moreover, the Custodian certified in the SOI that the Complainant questioned whether the records to be disclosed were the correct records. As such, the set of circumstances surrounding the identity of the records created a “reasonable basis” for the Custodian to seek clarification in accordance with Leibel, GRC 2004-51.

Here the Custodian did not conduct an insufficient search, but rather a misdirected search, which could have been prevented if the Custodian sought clarification of the request prior to assuming that the responsive records were Deduction/Earning History Detail Reports. As such, the copying fee charged for the nonconforming records was unwarranted and therefore unreasonable under OPRA.

Therefore, because the \$1.05 copying fee assessed by the Custodian and paid by the Complainant for records that were not responsive to the request is unwarranted and unreasonable under OPRA and could have been prevented if the Custodian sought clarification of the request prior to assuming that the records disclosed were responsive, the Custodian shall refund to the Complainant said copying fee. See Leibel, GRC 2004-51.

Payable Copying Fee

In Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order May 24, 2011), in which the complainant asserted that it was unnecessary for the custodian to make and charge for copies of records to be disclosed electronically, the Council held:

[B]ecause the Custodian had to make paper copies of the requested records in order to redact the requested minutes prior to providing same electronically, the Custodian's charge . . . for the cost of copying the records to perform redactions prior to providing the records to the Complainant electronically is warranted pursuant to N.J.S.A. 47:1A-5(b).

[Id.]

Here, after the Complainant objected to the records disclosed to him and forwarded to the Township Attorney a copy from the first page of a completed Wage Execution, the Custodian retrieved sixty-five (65) pages of responsive records. The Custodian certified in the SOI that she notified the Complainant via e-mail on March 28, 2022, that fifty (50) pages of said records must be copied to redact social security numbers and names and birthdates of minors; therefore, a \$2.50 copying charge had to be paid prior to disclosure.<sup>6</sup> The Complainant alleged in the complaint that the Custodian was unlawfully denying him access to the responsive records; however, the evidence of record reveals the Complainant never paid the assessed \$2.50 copying fee.

The Council has long held that a custodian is not required to disclose requested records until receiving payment for any incurred copying fees. In Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004), the Council held that as "the Custodian did not receive payment for the actual duplication cost of the requested records, [he] was not required under OPRA to release said copies." Id. Subsequently, in Cuba v. N. State Prison, GRC Complaint No. 2004-146 (February 2005), the Council held that "the Custodian was proper in withholding the release of the requested record until receiving payment for the copying fee from the Complainant." Id.

Accordingly, the Custodian did not violate OPRA by assessing a \$2.50 fee to make fifty (50) paper copies of the responsive records to redact social security numbers and the names and birthdates of minors N.J.S.A. 47:1A-5(b). Thus, the Custodian is not required to disclose the responsive records until the Complainant remits the assessed fee and no unlawful denial of access occurred. N.J.S.A. 47:1A-6; Santos, GRC 2004-74 and Cuba, GRC 2004-146.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the \$1.05 copying fee assessed by the Custodian and paid by the Complainant for records that were not responsive to the request is unwarranted and unreasonable under OPRA and could have been prevented if the Custodian sought clarification of the request prior to assuming that the records disclosed were responsive, the Custodian shall refund to the Complainant said copying fee. See Leibel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004).
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance**

---

<sup>6</sup> The GRC does not address the Custodian's redactions made to the responsive records because the Complainant did not raise this as an issue in the complaint.

**where the Custodian does not comply, 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).**

3. The Custodian did not violate OPRA by assessing a \$2.50 fee to make fifty (50) paper copies of the responsive records to redact social security numbers and the names and birthdates of minors N.J.S.A. 47:1A-5(b). Thus, the Custodian is not required to disclose the responsive records until the Complainant remits the assessed fee and no unlawful denial of access occurred. N.J.S.A. 47:1A-6; Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004) and Cuba v. N. State Prison, GRC Complaint No. 2004-146 (February 2005).

Prepared By: John E. Stewart

July 23, 2024