



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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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. 2022-115

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 the Custodian did not violate OPRA when assessing a \$0.15 balance due because additional underestimated paper copies were required. N.J.S.A. 47:1A-5(b). Further, the Custodian is not required to disclose the responsive records until the Complainant remits the full 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 30th 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 Madlinger¹
Complainant**

GRC Complaint No. 2022-115

v.

**Berkeley Township (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of “all bills received from Jcp&l, all purchase orders for Jcp&l, and copies of front and back of all checks to Jcp&l, relevant time period January 1, 2020 to [January 10, 2022].”

Custodian of Record: Beverly M. Carle

Request Received by Custodian: January 10, 2022

Response Made by Custodian: January 12, 2022, January 25, 2022 and March 15, 2022

GRC Complaint Received: April 11, 2022

Background³

Request and Responses:

On January 10, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 12, 2022, the Custodian responded in writing to the Complainant’s request informing him that his request requires an extension of time until February 14, 2022, because there are a large number of records responsive to the request, half of which are in storage and require medium conversion.

On January 25, 2022, the Custodian e-mailed the Complainant, informing him that there are approximately 540 pages of records responsive to the request of which forty-eight (48) pages must be reduced to paper for redactions pursuant to N.J.S.A. 47:1A-1.1. 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 \$2.40 was received, she would begin redacting the documents. The Custodian further informed the Complainant that she would require twenty-eight (28) business days from receipt of payment for copying, review, and redaction of the records. On this same date, the Complainant e-mailed the Custodian, questioning, “why don’t you send me

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

the 492 pages that do not require redactions?” However, the following day the Complainant paid the \$2.40 copying fee.

On March 2, 2022, the Custodian e-mailed the Complainant, informing him that due to the volume of records requested she needed an extension of time until March 15, 2022. On March 15, 2022, the Custodian e-mailed the Complainant, informing him that the total number of pages that had to be reduced to paper for redactions totaled fifty-one (51); therefore, the requested records would be disclosed upon payment of the additional \$0.15. In a reply e-mail that same date, the Complainant stated, “Maybe John or Carmen can toss the .15 in. I have to send it for legal review, second time doing this.”

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 January 12, 2022, the Custodian responded to his January 10, 2022 OPRA request informing him that she needed an extension of time.

The Complainant stated that on January 25, 2022, the Custodian e-mailed him stating he owes \$2.40 for the OPRA request. The Complainant stated that he replied asking for the pages that do not require redactions; however, he paid the fee on January 26, 2022.

The Complainant stated that on March 2, 2022, the Custodian requested another extension. The Complainant stated that on March 15, 2022, the Custodian sent him another e-mail informing him he owed an additional \$0.15, to which he did not agree. The Complainant asserted that the Custodian will not refund his money or give him any of the records he paid for.

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 January 10, 2022, and responded on January 12, 2022, January 25, 2022, and March 15, 2022.

The Custodian certified that the Complainant requested over two (2) years of records, some of which were in storage. The Custodian certified that she sent the request to the Finance Office, and on January 25, 2022, the Finance Office notified the Custodian that they needed approximately twenty-eight (28) business days to prepare the records for disclosure because the fronts and backs of the requested checks would require redactions to delete account information.⁴

The Custodian certified that she responded to the Complainant via e-mail dated January 25, 2022. The Custodian attached said e-mail to the SOI as Exhibit 12. In the e-mail the Custodian notified the Complainant that there are approximately 540 pages of records responsive to the request of which forty-eight (48) pages must be reduced to paper for redactions pursuant to Paff,

⁴ The evidence of record reveals that the Finance Office made such notification to the Custodian on January 11, 2022, and the Custodian, in turn, notified the Complainant on January 12, 2022, that due to the voluminous nature of the request, an extension of time until February 14, 2022 was required.

GRC 2010-09. The Custodian certified that the copying cost was approximated because JCP&L is paid on a monthly basis. The Custodian further informed the Complainant that the cost is \$0.05 per page; therefore, he owed a \$2.40 copying charge. The Custodian also informed the Complainant that once payment was received, she would begin redacting the records, and they would be ready in twenty-eight (28) business days. The Custodian certified that the copying cost was approximated because JCP&L is paid monthly.

The Custodian certified that on March 15, 2022, she e-mailed the Complainant to inform him that the copying, reviewing and redacting was completed; however, three (3) additional pages needed redaction. The Custodian certified that she further informed the Complainant that an additional \$0.15 was owed. The Custodian certified that the Complainant sent a reply e-mail that same date, stating that he wanted the Mayor or the Administrator to pay the additional copying cost.

The Custodian certified that the records were prepared and are ready for disclosure pending the Complainant's payment of the additional \$0.15 owed for the copying costs. The Custodian certified that she requested only the statutory amount owed; however, the Complainant refuses to pay the additional \$0.15.

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).]

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, the Custodian informed the Complainant that out of approximately 540 pages of records responsive to the request, forty-eight (48) pages would have to be reduced to paper to make redactions, which is in accord with Paff, GRC 2010-09. There is nothing in the evidence of record indicating that the Complainant objected to the proposed redactions. Further, there was no dispute between the parties as to whether the Complainant agreed to pay the copying costs; the evidence of record reveals that the Complainant tendered payment of \$2.40 to the Custodian on January 26, 2022, in satisfaction of the estimated copying costs.

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.

Although the Complainant implied in his March 15, 2022 e-mail to the Custodian that the \$0.15 is a *de minimus* amount, and therefore Berkeley Township officials should pay the additional costs, the GRC has held that a custodian is not required to waive the statutory fee even when the complainant lacks the ability to pay. See Reid v. N.J. Dep’t of Corr., GRC Complaint No. 2010-83 (October 2011) (holding that OPRA did not include any “language relieving the Complainant from paying the appropriate copying cost because he is indigent.”).

Here, the Complainant agreed to pay the copying costs associated with preparation of the requested records for disclosure. The evidence of record reflects that upon receipt of the estimated copying costs from the Complainant, the Custodian commenced work copying, reviewing and redacting the records. Although the Complainant knew from the Custodian’s response that the total number of records requiring redaction was an approximation, he refused to pay the additional \$0.15.

The GRC declines to require the Custodian to waive the statutory fee balance based on the Complainant’s refusal to pay it. The Custodian did not violate OPRA because she was not required to waive the \$0.15 balance of the copying costs associated with disclosing the responsive records.

Accordingly, the Custodian did not violate OPRA when assessing a \$0.15 balance due because additional underestimated paper copies were required. N.J.S.A. 47:1A-5(b). Further, the Custodian is not required to disclose the responsive records until the Complainant remits the full 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 the Custodian did not violate OPRA when assessing a \$0.15 balance due because additional underestimated paper copies were required. N.J.S.A. 47:1A-5(b). Further, the Custodian is not required to disclose the responsive records until the Complainant remits the full 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