



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Commissioner*

**FINAL DECISION**

**November 30, 2010 Government Records Council Meeting**

Barbara P. Criscione  
Complainant

Complaint No. 2010-68

v.

Town of Guttenberg (Hudson)  
Custodian of Record

At the November 30, 2010 public meeting, the Government Records Council (“Council”) considered the November 23, 2010 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 because the Custodian provided a written response requesting an extension on the sixth (6<sup>th</sup>) business day following receipt of the Complainant’s OPRA request and providing a date certain, April 2, 2010, on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time to April 2, 2010 to respond to the Complainant’s OPRA request was made in writing within the statutorily mandated seven (7) business day response time and that such an extension was reasonable, and because the Custodian charged the Complainant the enumerated copying rates set forth in OPRA at N.J.S.A. 47:1A-5.b. which were in effect at the time of the Complainant’s OPRA request, and because the Custodian made copies of the requested records available to the Complainant on March 26, 2010 which were received by the Complainant’s agent on March 30, 2010, prior to the April 2, 2010 extended date for the Custodian’s response, the Custodian has not unlawfully denied access to the requested records. N.J.S.A. 47:1A-6.

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 November, 2010

Robin Berg Tabakin, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: December 6, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 30, 2010 Council Meeting**

**Barbara P. Criscione<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-68**

v.

**Town of Guttenberg (Hudson)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of minutes of meetings held from January 2009 to July 2009.

**Request Made:** February 23, 2010

**Response Made:** March 9, 2010

**Custodian:** Alberto Cabrera

**GRC Complaint Filed:** March 25, 2010<sup>3</sup>

**Background**

**February 23, 2010<sup>4</sup>**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter which references OPRA.

**March 5, 2010**

Telephone call from the Custodian to the Complainant. The Custodian requests additional time to fulfill the OPRA request and also notifies the Complainant that he will follow up the conversation with a formal letter.

**March 9, 2010**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the sixth (6<sup>th</sup>) business day following receipt of the Complainant's OPRA request. The Custodian requests an extension of time to fulfill the OPRA request until April 2, 2010, and cites the volume of the Complainant's request and the lack of staff in the Clerk's Office.

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

<sup>2</sup> Represented by Charles P. Daglian, Esq. (Jersey City, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on March 25, 2010.

<sup>4</sup> The evidence in the record indicates the Custodian received the Complainant's OPRA request on March 1, 2010.

### **March 17, 2010**

Letter from the Complainant to the Custodian. The Complainant states that she has received the Custodian's letter dated March 9, 2010 requesting an extension of time to fulfill the OPRA request. The Complainant states that N.J.S.A. 47:1A-5.i. of OPRA requires that a Custodian “. . . shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived . . . .” The Complainant maintains that more than three (3) weeks have passed since she made her original OPRA request and that the Custodian has failed to respond to her request as required by N.J.S.A. 47:1A-5.i.

The Complainant states that the delay in providing the requested meeting minutes from the town Council is alarming and that such minutes are required to be available promptly after a meeting takes place. The Complainant cites the Open Public Meetings Act (“OPMA”) which states that “each public body shall keep reasonably comprehensible minutes of all its meeting showing the time and place . . . which shall be promptly available to the public to the extent that making such matters public . . . .” The Complainant also cites to Matawan Regional Teachers Association v. Matawan-Aberdeen Regional Bd. Of Educ., 212 N.J. Super. 328 (Law Div. 1986), in support of the proposition that New Jersey courts have interpreted this statute to require that minutes be available within two weeks after any regular meeting.

### **March 18, 2010**

Letter from the Complainant to the Custodian. The Complainant states that she expects her OPRA request to be fulfilled by March 23, 2010. The Complainant states that she did not agree in writing to the extension until April 2, 2010 that the Custodian requested. The Complainant states that if the Custodian prints the minutes using a computer, time wasted due to research and scanning to make copies can be avoided.

### **March 22, 2010**

Letter from the Complainant to the Custodian. The Complainant states that she wishes to clarify that her OPRA request was only for the minutes in the meeting and not for any resolutions or ordinances. The Complainant informs the Custodian that she is going to send Ms. Tavany Scott to pick up the requested documents and asks to be notified of the total cost of the copies.

### **March 25, 2010**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:<sup>5</sup>

- Letter from the Complainant to the Custodian dated February 23, 2010
- Letter from the Complainant to the Custodian dated March 17, 2010
- Letter from the Complainant to the Custodian dated March 18, 2010
- Letter from the Complainant to the Custodian dated March 22, 2010

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<sup>5</sup> The Complainant does not make any assertions to supplement this Complaint.

The Complainant agrees to mediate this complaint.

**March 30, 2010**

Letter from the Custodian to the Complainant. The Custodian informs the Complainant that the requested records are ready to be picked up. The Custodian gives a breakdown of the cost as follows:

Pages 1-10 cost: 75 cents a page for a total of \$7.50.

Pages 11-20 cost: 50 cents a page for a total of \$5.00.

Pages 21-54 cost: 25 cents a page for a total of \$8.50.<sup>6</sup>

**April 16, 2010**

Offer of Mediation sent to the Custodian.

**April 20, 2010**

The Custodian declines mediation. The Custodian asserts that the Complainant has received all the documents requested and that he has tried to call on two (2) occasions to speak to the Complainant but has always been told that she is not available. The Custodian states that the Complainant has never returned his calls.

**May 10, 2010**

Request for the Statement of Information (“SOI”) sent to the Custodian.

**May 17, 2010**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated February 23, 2010
- Letter from the Complainant to the Custodian dated March 9, 2010
- Letter from the Complainant to the Custodian dated March 17, 2010
- Letter from the Complainant to the Custodian dated March 18, 2010
- Letter from the Complainant to the Custodian dated March 22, 2010
- Complainant’s Denial of Access Complaint dated March 25, 2010
- Letter from the Custodian to the Complainant dated March 30, 2010
- Receipt for payment of the requested records dated March 31, 2010
- Letter from the GRC to the Custodian dated April 16, 2010

The Custodian certifies that the Custodian provided copies of all records requested on March 26, 2010 and that the Complainant received the requested documents on March 30, 2010. The Custodian certifies that on March 26, 2010 he placed a call made to the Complainant’s work telephone number at the Guttenberg Housing Authority but he was told that the Complainant was not available. The Custodian certifies that he left a message concerning the records with the Complainant’s receptionist. The Custodian provides a receipt of payment for the requested records in support of his certification that the Complainant has received all records requested.

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<sup>6</sup> The GRC notes that these rates were set forth in OPRA at N.J.S.A. 47:1A-5.b. and were in effect at the time of the Complainant’s OPRA request.

## October 22, 2010

Letter from the Custodian to the GRC. The Custodian certifies that he personally handled the March 1, 2010 OPRA request from the Complainant and has complied with OPRA. The Custodian states that on March 5, 2010 he called and spoke to the Complainant and informed her of the extension required to fulfill her OPRA request and that he would follow with a formal letter. The Custodian maintains that on March 9, 2010, he sent a letter via certified mail (No. 7008-3230-0001-8009-1271) to the address provided by the Complainant. The Custodian further certifies that on March 17, 2010, he received a letter from the Complainant that expressed her dissatisfaction with the extension. The Custodian states that he called the Complainant on several occasions and left messages with her staff to have his calls returned, but he never heard back from the Complainant. The Custodian states that on March 18, 2010 he received another letter from the Complainant expressing her dissatisfaction with the extension. The Custodian maintains that on March 22, 2010, he received a fax from the Complainant that amended the OPRA request by changing the range of dates for the requested minute dates.<sup>7</sup> The Custodian states that on March 26, 2010, he called the Complainant and informed her that the requested documents were ready to be picked up. The Custodian certifies that the request was not picked up until March 31, 2010.

### Analysis

#### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA further provides:

“Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the

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<sup>7</sup> The amendment corrects an error whereby the Complainant requested minutes up to July 2010, which at the time of the request had not yet occurred. The amendment also includes a request that no resolutions or ordinances be supplied with the minutes.

request, provided that the record is currently available and not in storage or archived. . . . The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.” N.J.S.A. 47:1A-5.i.

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 mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.<sup>8</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

In Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-63 (July 2006), the Council determined that if the Custodian required additional time beyond the seven (7) business day time period required by OPRA in order to satisfy the Complainant’s request, she should have so notified the Complainant in order to do so. In Paff v. Bergen County Prosecutor’s Office, GRC Complaint No. 2005-115 (March 2006), the Custodian knew he needed additional time in order to respond to the Complainant’s request, but failed to obtain a written agreement from the Complainant extending the seven (7) business day time frame required under OPRA to respond. The Council held that the Custodian’s failure to obtain a written agreement extending the seven (7) business day time period resulted in a deemed denial of the request.

In this case, the Custodian provided a written response requesting an extension on the sixth (6<sup>th</sup>) business day following receipt of the Complainant’s OPRA request. The Custodian gave the Complainant a date certain, April 2, 2010, upon which to expect production of the records requested. The GRC notes, however, that the Complainant stated that she did not agree to the extension of time requested by the Custodian to respond to the OPRA request. Notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the evidence of record demonstrates that the Custodian’s request for an extension of time to April 2, 2010 to respond to the Complainant’s OPRA request was made in writing within the statutorily mandated seven (7) business day response time and that such an extension was reasonable based on the volume of records requested (meeting minutes from January 2009 to July 2009) and the lack of staff in the Clerk’s office.

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<sup>8</sup> It is the GRC’s position that a custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

Moreover, the evidence of record demonstrates that the Custodian charged the Complainant the enumerated copying rates set forth in OPRA at N.J.S.A. 47:1A-5.b. which were in effect at the time of the Complainant's OPRA request. Finally, the evidence in the record demonstrates that the Custodian made copies of the requested records available to the Complainant on March 26, 2010, and that such copies were received by the Complainant's agent on March 30, 2010, prior to the April 2, 2010 extended date for the Custodian's response.

Therefore, because the Custodian provided a written response requesting an extension on the sixth (6<sup>th</sup>) business day following receipt of the Complainant's OPRA request and providing a date certain, April 2, 2010, upon which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian's request for an extension of time to April 2, 2010 to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time and that such an extension was reasonable, and because the Custodian charged the Complainant the enumerated copying rates set forth in OPRA at N.J.S.A. 47:1A-5.b. which were in effect at the time of the Complainant's OPRA request, and because the Custodian made copies of the requested records available to the Complainant on March 26, 2010, and that such copies were received by the Complainant's agent on March 30, 2010, prior to the April 2, 2010 extended date for the Custodian's response, the Custodian has not unlawfully denied access to the requested records. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Custodian provided a written response requesting an extension on the sixth (6<sup>th</sup>) business day following receipt of the Complainant's OPRA request and providing a date certain, April 2, 2010, on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian's request for an extension of time to April 2, 2010 to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time and that such an extension was reasonable, and because the Custodian charged the Complainant the enumerated copying rates set forth in OPRA at N.J.S.A. 47:1A-5.b. which were in effect at the time of the Complainant's OPRA request, and because the Custodian made copies of the requested records available to the Complainant on March 26, 2010 which were received by the Complainant's agent on March 30, 2010, prior to the April 2, 2010 extended date for the Custodian's response, the Custodian has not unlawfully denied access to the requested records. N.J.S.A. 47:1A-6.

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

November 23, 2010