



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

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

August 27, 2013 Government Records Council Meeting

Richard Rivera
Complainant

Complaint No. 2012-86

v.

City of Bayonne (Hudson)
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council (“Council”) considered the August 20, 2013 Supplemental 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 Council accept the Administrative Law Judge’s Initial Decision dated July 31, 2013, which concludes that a Stipulation of Dismissal filed by the parties on July 16, 2013, “...meets the safeguards requirements of N.J.A.C. 1:1-19.1 and that these proceedings are hereby **DISMISSED.**”

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 27th Day of August, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council



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

A handwritten signature in black ink, appearing to read "Ritardi". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: August 29, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
August 27, 2013 Council Meeting**

**Richard Rivera¹
Complainant**

GRC Complaint No. 2012-86

v.

**City of Bayonne (Hudson)²
Custodial Agency**

Records Relevant to Complaint:

1. Current Bayonne Police Department Table of Organization.
2. Current City of Bayonne Police Department Ordinance detailing the number of officers authorized and their ranks.
3. City of Bayonne State and Local Government Information Form Number EEO 4 for the years 2008-2012.

Custodian of Record: Robert F. Sloan

Request Received by Custodian: February 27, 2012

Response Made by Custodian: No response made

GRC Complaint Received: March 23, 2012

Background

January 29, 2013 Council Meeting:

At its January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 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, found that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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 (Interim Order October 31, 2007).

¹ No legal representation listed on record.

² Represented by Niti G. Raval, Esq., of Florio & Kenny, L.L.P. (Hoboken, NJ).

2. Based on contradictory facts in the Custodian's and Complainant's submissions, there is conflicting evidence regarding whether the Custodian, notwithstanding his deemed denial, disclosed the requested records. Therefore, it is necessary to refer this matter to the Office of Administrative Law for a hearing to resolve the facts and determine whether the Custodian disclosed the requested records in full or in part, or failed to disclose said records at all.
3. Because of the conflicting evidence submitted by both parties, this complaint must be referred to the Office of Administrative Law to resolve the facts, at which time the Administrative Law Judge should also determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On February 1, 2013, the Council distributed its Interim Order to all parties. On May 3, 2013, this complaint was transmitted to the Office of Administrative Law ("OAL"). On August 2, 2013, OAL forwarded the Administrative Law Judge's Initial Decision which finds that the parties filed a Stipulation of Dismissal with OAL on July 16, 2013, which meets the requirements of N.J.A.C. 1:1-19.1 and fully disposes of all issues in controversy. The Administrative Law Judge therefore concludes that the proceedings be dismissed.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council accept the Administrative Law Judge's Initial Decision dated July 31, 2013, which concludes that a Stipulation of Dismissal filed by the parties on July 16, 2013, "...meets the safeguards requirements of N.J.A.C. 1:1-19.1 and that these proceedings are hereby **DISMISSED.**"

Prepared By: John E. Stewart, Esq.

Approved By: Brandon D. Minde, Esq.
Executive Director

August 20, 2013