



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

December 20, 2013 Government Records Council Meeting

Joel L. Shain, Esq. (On behalf of
Richard Pucci, Mayor' & Monroe Township)
Complainant

Complaint No. 2013-146

v.

State of NJ, Office of the Governor
Custodian of Record

At the December 20, 2013 public meeting, the Government Records Council ("Council") considered the December 10, 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, finds that the Custodian bore his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there has been no "deemed" denial of the Complainant's OPRA request. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i). The Custodian provided the appropriate documents and did not unlawfully deny access to any requested records. Further, based on the Custodian's multiple responses and extensions, the GRC declines to address whether the Complainant is a prevailing party because the evidence herein supports that this complaint was not the catalyst for the Custodian to respond on May 22, 2013, one (1) day after the filing of this complaint. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006); Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

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 20th Day of December, 2013

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: December 23, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 20, 2013 Council Meeting**

**Joel L. Shain, Esq. (on Behalf of
Richard Pucci, Mayor, & Monroe Township)¹
Complainant**

GRC Complaint No. 2013-146

v.

**State of NJ, Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. All correspondence, including e-mail, between the Governor or any officer or employee of the State of New Jersey (“State”) or any subdivision thereof, and any other officer or employee of the State or any subdivision thereof, relating to the Governor’s November 3, 2012 letter (“Letter”) concerning the Township of Monroe’s (Township”) reissuance of tax bills. This request includes but is not limited to any e-mail or correspondence relating to production or compilation of the mailing list of all residents of the Township who received the Letter.
2. All correspondence, including e-mail, between the Governor or any officer or employee of the State and or subdivision thereof, and any other officer or employee of the State or any subdivision thereof, relating to Governor’s survey entitled “Christie Middle-Class Reform Agenda” (“Survey”). This request includes but is not limited to any e-mail or correspondence relating to production or compilation of the mailing list of all residents of the Township who received the Survey and relating to production or creation of the content of the Survey.
3. All correspondence, including e-mail, between the Governor or any officer or employee of the State or any subdivision thereof, and any resident of the Township who completed or partially completed the Survey.
4. All correspondence, including e-mails, between the Governor or any officer or employee of the State or any subdivision thereof, and any candidate, candidate committee, continuing political committee, political organization, political club, political party, political committee, or political party committee relating to the Letter.
5. All correspondence, including e-mails, between the Governor or any officer or employee of the State or any subdivision thereof, and any candidate, candidate committee, continuing political committee, political organization, political club, political party, political committee, or political party committee relating to the Survey.

¹ The Complainant represents the Township of Monroe in this complaint.

² Represented by Deputy Attorney General Christopher Huber.

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6. All correspondence, including e-mails, between the Governor or any officer or employee of the State or any subdivision thereof, and any political consultant, campaign consultant, political director or other party who is not a Township resident relating to the Letter.
7. All correspondence, including e-mails, between the Governor or any officer or employee of the State or any subdivision thereof, and any political consultant, campaign consultant, political director or other party who is not a Township resident relating to the Survey.
8. All correspondence, including e-mails, between the Governor or any officer or employee of the State or any subdivision thereof, and any polling organization, including but not limited to the Monmouth University Institute and Rutgers-Eagleton, relating to the Survey.

Custodian of Record: Ryan Goodwin, Esq.

Request Received by Custodian: April 24, 2013

Response Made by Custodian: May 3, 2013

GRC Complaint Received: May 21, 2013

Background³

Request and Response:

On April 23, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 3, 2013, the seventh (7th) business day after receipt of same, Assistant Attorney General (“AAG”) Lew Scheindlin responded on behalf of the Custodian advising that records responsive to Item No. 3 were being provided in several separate e-mails due to the number of responsive records. AAG Scheindlin further noted that the records contain redactions based upon a citizen’s reasonable expectation of privacy. N.J.S.A. Executive Order No. 26 (Gov. McGreevey, 2002)(“EO 26”). AAG Scheindlin further sought a two (2) week extension of time to respond to the remainder of the OPRA request.

On May 17, 2013, the Custodian advised the Complainant that a short extension was necessary. On May 22, 2013, AAG Scheindlin responded to the Complainant’s OPRA request stating that attached are the records responsive to the Complainant’s OPRA request. AAG Scheindlin further stated that some records contain redactions based on a citizen’s reasonable expectation of privacy. AAG Scheindlin advised that any additional records are exempt as “inter-agency, intra-agency advisory, consultative or deliberative” (“ACD”) material. Additionally, AAG Scheindlin resent the records responsive to item No. 3 noting that he did not receive confirmation of receipt.

Denial of Access Complaint:

On May 21, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian received his

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.
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OPRA request on May 1, 2013 and was required to respond by close of business on May 10, 2013. The Complainant contends that as of this date, he has not received a response and thus his request is “deemed” denied. The Complainant further argues that he should be deemed a prevailing party entitled to an award of reasonable attorney’s fees. Mason v. City of Hoboken, 196 N.J. 51, 66-67 (2008).

Statement of Information:

On July 31, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on April 24, 2013. The Custodian certifies that his search consisted of reviewing records in the Governor’s Office and determining whether redactions were necessary. The Custodian certifies that AAG Scheindlin provided records responsive to item No. 3 on May 3, 2013. The Custodian certifies that following two (2) extensions, AAG Scheindlin responded to the remainder of the request items on May 22, 2013.

The Custodian certifies that regarding item Nos. 1 and 2, AAG Scheindlin provided records redacting cell phone numbers and account numbers. N.J.S.A. 47:1A-1; EO No. 26. The Custodian further certifies that records considered ACD material were withheld. The Custodian certifies that regarding item No. 3, AAG Scheindlin provided records redacting names, addresses, telephone numbers, fax numbers and personal e-mail addresses. Id. The Custodian further certifies that no records responsive to item Nos. 4 through 8 exist.

The Custodian contends that the Complainant only claims that he failed to respond to the OPRA request. The Custodian notes that contrary to the complaint, AAG Scheindlin responded appropriately by seeking extensions and providing 898 pages of records within the requested extensions. The Custodian thus argues that the instant complaint is without merit.

Counsel finally argues that notwithstanding the fact that the Complainant is not a prevailing party, the Council should conclude that an award of attorney’s fees would be invalid. Counsel argues that OPRA’s fee-shifting provision is intended to enable “... the ordinary citizen ...” to gain records from a public agency. NJDPM v. NJ Dep’t of Corrections, 185 N.J. 137, 153 (2005). Counsel states that the request here was made on behalf of the Mayor and Township. Counsel contends that the purpose of the fee-shifting provision would not be fulfilled if public agencies were permitted to obtain attorney’s fees from other public entities.

Analysis⁴

Timeliness

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). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to

⁴ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.
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N.J.S.A. 47:1A-5(g).⁵ 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 (Interim Order October 31, 2007).

The Complainant filed this complaint arguing that he never received a response to his OPRA request. However, in the SOI, the Custodian certified that the Governor's Office responded on May 3, May 17, and May 22, 2013 and further provided these written responses in support his certification.

Therefore, the Custodian bore his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there has been no "deemed" denial of the Complainant's OPRA request. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i). The Custodian provided the appropriate documents and did not unlawfully deny access to any requested records. Further, based on the Custodian's multiple responses and extensions, the GRC declines to address whether the Complainant is a prevailing party because the evidence herein supports that this complaint was not the catalyst for the Custodian to respond on May 22, 2013, one (1) day after the filing of this complaint. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006); Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian bore his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there has been no "deemed" denial of the Complainant's OPRA request. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i). The Custodian provided the appropriate documents and did not unlawfully deny access to any requested records. Further, based on the Custodian's multiple responses and extensions, the GRC declines to address whether the Complainant is a prevailing party because the evidence herein supports that this complaint was not the catalyst for the Custodian to respond on May 22, 2013, one (1) day after the filing of this complaint. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006); Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

Prepared By: Frank F. Caruso
Senior Case Manager

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

December 10, 2013

⁵ 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.

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