



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2019 Government Records Council Meeting

Shawn G. Hopkins
Complainant

Complaint No. 2014-35

v.

Township of Manalapan (Monmouth)
Custodian of Record

At the February 26, 2019 public meeting, the Government Records Council (“Council”) considered the February 19, 2019 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 this complaint be dismissed because the Complainant withdrew same (via Complainant’s Counsel) in an e-mail to the GRC on February 12, 2019. Therefore, no further adjudication is required.

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 26th Day of February, 2019

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: March 1, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
February 26, 2019 Council Meeting**

**Shawn G. Hopkins¹
Complainant**

GRC Complaint No. 2014-35

v.

**Township of Manalapan (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Township of Manalapan (“Township”) including property photographs.

Custodian of Record: Regina Preteroti

Request Received by Custodian: January 3, 2014

Response Made by Custodian: None.

GRC Complaint Received: January 21, 2014

Background

January 31, 2019 Council Meeting:

At its January 31, 2019 public meeting, the Council considered the January 22, 2019 Findings and Recommendations of the Council Staff 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 her burden of proof that she 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). See also Verry v. West Milford Bd. of Educ. (Passaic), GRC Complaint No. 2015-156 (Interim Order dated September 27, 2016).
2. The Custodian may have unlawfully denied access to the responsive CAMA data and photographs. N.J.S.A. 47:1A-6; Hopkins v. Monmouth Cnty. Bd. of Taxation, et al.

¹ Represented by Richard Gutman, Esq. (Montclair, NJ).

² Represented by Roger J. McLaughlin, Esq., of McLaughlin, Stauffer & Shaklee, P.C. (Wall, NJ).

GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must obtain and disclose the responsive CAMA data and photographs that existed at the time of the Complainant's OPRA request. Should no photographs exist for that time frame, the Custodian must certify to this fact.

3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Council Staff.⁵**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On February 4, 2019, the Council distributed its Interim Order to all parties. On February 11, 2019, the Custodian responded to the Council's Interim Order. Therein, the Custodian certified that she disclosed all responsive records to the Complainant on January 25, 2019.⁶ The Custodian affirmed that the Complainant confirmed his satisfaction with the disclosure.

Additional Submissions:

On February 12, 2019, Complainant's Counsel e-mailed the GRC confirming that all issues were settled, and this complaint may be withdrawn.

Analysis

No analysis required.

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

⁶ The Custodian noted that the Complainant asked for current data, which she provided.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that this complaint be dismissed because the Complainant withdrew same (via Complainant's Counsel) in an e-mail to the GRC on February 12, 2019. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Acting Executive Director

February 19, 2019



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
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LT. GOVERNOR SHEILA Y. OLIVER
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INTERIM ORDER

January 31, 2019 Government Records Council Meeting

Shawn G. Hopkins
Complainant

Complaint No. 2014-35

v.

Township of Manalapan (Monmouth)
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 Findings and Recommendations of the Council Staff 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. The Custodian did not bear her burden of proof that she 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). See also Verry v. West Milford Bd. of Educ. (Passaic), GRC Complaint No. 2015-156 (Interim Order dated September 27, 2016).
2. The Custodian may have unlawfully denied access to the responsive CAMA data and photographs. N.J.S.A. 47:1A-6; Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must obtain and disclose the responsive CAMA data and photographs that existed at the time of the Complainant’s OPRA request. Should no photographs exist for that time frame, the Custodian must certify to this fact.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹**

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.



certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Council Staff.³

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 31st Day of January, 2019

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: February 4, 2019

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
January 31, 2019 Council Meeting**

**Shawn G. Hopkins¹
Complainant**

GRC Complaint No. 2014-35

v.

**Township of Manalapan (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Township of Manalapan (“Township”) including property photographs.

Custodian of Record: Regina Preteroti
Request Received by Custodian: January 3, 2014
Response Made by Custodian: None.
GRC Complaint Received: January 21, 2014

Background³

Request and Response:

On January 2, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On January 21, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he previously requested CAMA data from the County on December 18, 2013.⁴ The Complainant stated that the Monmouth County (“County”) Tax Board advised him to request the data individually from each municipality.

The Complainant argued that the requested CAMA data has been stored in a database that has been paid for and maintained by the County since 1996. The Complainant asserted that the software program utilized for the data helps maintain and calculate assessments. The

¹ Represented by Richard Gutman, Esq. (Montclair, NJ).

² Represented by Roger J. McLaughlin, Esq., of McLaughlin, Stauffer & Shaklee, P.C. (Wall, NJ).

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

⁴ Ibid.

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Complainant asserted his belief that the Township unlawfully denied access to the requested data because:

- Six (6) municipalities in Monmouth County, Morris County, and Sussex County, as well as all 24 municipalities in Gloucester County, disclosed CAMA data to him. All municipalities utilize Microsystems-NJ.com, L.L.C. (Microsystems) as their MODIV/CAMA vendor.
- The software program is funded, maintained, and operated by the County under a 1996 shared services agreement.
- The County accesses various information from the database.
- S-2234, entitled “Monmouth Assessment Demonstration Program,” requires⁵ all municipalities within the County to utilize the MODIV/CAMA program and there is a retention schedule for property record cards (“PRC”).
- Revaluation contracts require firms to deliver PRCs to the municipality, which utilize them to make the data files.
- The Tax Assessor’s handbook refers to permanent PRCs and information that should be contained within an assessor’s files.

Statement of Information:

On February 27, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she did not receive the Complainant’s January 2, 2014 OPRA request. The Custodian certified that she did not conduct a search because she was unaware of the subject OPRA request until the filing of this complaint on January 21, 2014.

The Custodian asserted that she was unsure whether the records sought by the Complainant existed. The Custodian further noted that it appeared the request submitted was on the County’s form and not the Township’s official OPRA request form. The Custodian also asserted that at no time prior to the complaint filing did the Complainant contact the Township to confirm receipt of the OPRA request.

The Custodian argued that the GRC should dismiss this complaint because there was no “intentional or willful” denial and no civil penalty should be assessed. The Custodian also offered to allow the Complainant to resubmit his OPRA request on the appropriate form, at which point it would be processed in a timely manner.⁶

⁵ On January 10, 2011, the Senate passed S-2234 (Sca) 1R by a vote of 39-0. On that same date, the bill was received in the Assembly and referred to the Assembly Housing and Local Government Committee. Neither S-2234 nor its Assembly counterpart, A-3227, saw any further action in the Assembly during the 2010-2011 legislative session. The Complainant might instead be referring to S-1213, which Governor Christie signed into law as L. 2013, c. 15, on January 25, 2013.

⁶ In Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies’ OPRA request forms for making requests, no custodian shall withhold such records if the written request is not presented on the official form. The written request shall include the requisite information prescribed in N.J.S.A. 47:1A-5(f). Id. Therefore, requestors may submit a request not on an official form as long as it sufficiently invokes OPRA.

Additional Submissions:

On July 26, 2014, Complainant's Counsel submitted a letter brief to the GRC. Therein, Counsel first argued that the Complainant certified that he e-mailed the subject OPRA request to the Custodian on January 2, 2014. Counsel contended that the Custodian failed to respond; thus, a violation of OPRA occurred. Counsel also argued the Complainant's request, regardless of which form it was on, was valid in accordance with N.J.S.A. 47:1A-5(g) and Renna v. Cnty. Of Union, 407 N.J. Super. 230 (App. Div. 2009).⁷

On April 14, 2016, the GRC sought additional information from the Custodian. Specifically, the GRC noted that the Custodian used non-specific language in the SOI when asserting that she did not receive the subject OPRA request. Based on this, the GRC requested that the Custodian provide certified responses to the following:

1. Did the Custodian or any other employee of the Township receive the Complainant's OPRA request via e-mail on or about January 2, 2014?
2. If the answer to question No. 1 is **NO**, please certify to the search the Township conducted to attempt to locate the allegedly submitted OPRA request.
3. If the answer to question No. 1 is **YES**, please certify to the reason why the Township failed to respond to the Complainant's OPRA request.

The GRC requested that the Custodian provide her certified responses by no later than April 19, 2016.

On the same day, Complainant's Counsel submitted a legal certification executed by the Complainant. Therein, the Complainant certified that he submitted his OPRA request via e-mail to the Custodian on January 2, 2014. The Complainant attached a copy of the e-mail and attachment to support his certification.

On April 19, 2016, Custodian's Counsel sought an extension of time until April 22, 2016 to submit the Custodian's additional information response. On the same day, the GRC granted the extension request. On April 22, 2016, the Custodian responded to the GRC's request for additional information. Therein, the Custodian certified that upon receipt of this complaint, she searched her e-mail and located the Complainant's unread e-mail attaching the subject OPRA request. The Custodian averred that due to the New Year's holiday, she inadvertently missed the Complainant's OPRA request. The Custodian certified that she never reviewed the request, determined whether records existed and were subject to OPRA, or communicated directly with the Complainant about the request.

On July 8, 2016, the Complainant's Counsel requested that the GRC proceed with the adjudication of this complaint because, in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.*, Microsystems waived its claim of confidentiality. Further, Counsel noted that Microsystems agreed to provide responsive CAMA data for all municipalities in the County.

⁷ On August 7, 2014, Custodian's Counsel objected to this submission as untimely.
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Analysis

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 N.J.S.A. 47:1A-5(g).⁸ 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In Verry v. West Milford Bd. of Educ. (Passaic), GRC Complaint No. 2015-156 (Interim Order dated September 27, 2016), the complainant filed a complaint after not receiving a response to his OPRA request. In the SOI, the custodian certified that the OPRA request was received in her inbox; however, she claimed that she did not see the request upon receipt. The custodian further asserted that her departure for vacation prior to seeing the request resulted in additional delays in responding. The Council held that the request was "deemed" denied, reasoning that the custodian could not have reasonably overlooked the request for multiple days.

Here, the Custodian certified in the SOI that she did not receive the Complainant's OPRA request. That e-mail, sent on January 2, 2014 at 9:32 p.m., contained the subject header "OPRA request." However, in response to the GRC's request for additional information, the Custodian certified that she received the Complainant's e-mail attaching the subject OPRA request on January 3, 2014 in her inbox. The Custodian, however, asserted that she inadvertently missed the e-mail due to the New Year's holiday. The Council's decision in Verry applicable here. The Custodian confirmed receipt of the e-mail in her inbox on January 3, 2014. Although she may not have seen it, it was received into her inbox and remained there unread through the statutory time frame and beyond. The GRC is thus satisfied that a "deemed" denial occurred here.

Therefore, the Custodian did not bear her burden of proof that she 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, GRC 2007-11. See also Verry, GRC 2015-156.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a

⁸ 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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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.

Regarding the CAMA data and property photographs sought in the Complainant’s OPRA request, the Council has held on multiple occasions that they are “government records” subject to disclosure under OPRA. See *i.e.* Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). See also Hopkins v. Borough of Freehold (Monmouth), GRC Complaint No. 26 (Interim Order dated July 25, 2017); Hopkins v. Twp. of Howell (Monmouth), GRC Complaint No. 2014-33 (Interim Order dated April 24, 2018). In each of those instances, the Council ordered disclosure of the CAMA data and photographs that existed at the specific time that the Complainant submitted his OPRA request. Here, there is no evidence in the record here to suggest that any other outcome would be appropriate.

Accordingly, the Custodian may have unlawfully denied access to the responsive CAMA data and photographs. N.J.S.A. 47:1A-6; Hopkins, GRC 2014-01, *et seq.* Thus, the Custodian must obtain and disclose the responsive CAMA data and photographs that existed at the time of the Complainant’s OPRA request. Should no photographs exist for that time frame, the Custodian must certify to this fact.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Prevailing Party Attorney’s Fees

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). See also Verry v. West Milford Bd. of Educ. (Passaic), GRC Complaint No. 2015-156 (Interim Order dated September 27, 2016).

2. The Custodian may have unlawfully denied access to the responsive CAMA data and photographs. N.J.S.A. 47:1A-6; Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must obtain and disclose the responsive CAMA data and photographs that existed at the time of the Complainant's OPRA request. Should no photographs exist for that time frame, the Custodian must certify to this fact.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹⁰ to the Council Staff.¹¹**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Acting Executive Director

January 22, 2019

⁹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

¹⁰ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹¹ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Shawn G. Hopkins v. Township of Manalapan (Monmouth), 2014-35 – Findings and Recommendations of the Council Staff