



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**October 27, 2015 Government Records Council Meeting**

Lisa Hurff  
Complainant

Complaint No. 2014-416

v.

Borough of Helmetta (Middlesex)  
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 2015 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 dismisses the complaint because the Complainant withdrew the complaint in writing to the Office of Administrative Law on September 8, 2015. 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 27<sup>th</sup> Day of October, 2015

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: October 29, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
October 27, 2015 Council Meeting**

**Lisa Hurff<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-416**

**v.**

**Borough of Helmetta (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of all e-mails, Facebook message posts, and OneDrive files pertaining to the Helmetta animal shelter, including any of the employees. Copies of all text messages.

**Custodian of Record:** Sandra Bohinski

**Request Received by Custodian:** October 20, 2014

**Response Made by Custodian:** October 29, 2014, and November 25, 2014

**GRC Complaint Received:** December 5, 2014

**Background**

**June 30, 2015 Council Meeting:**

At its June 30, 2015, public meeting, the Government Records Council (“Council”) considered the June 23, 2015, 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 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 another extension of time within the extended time frame, 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* Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. Aside from the “deemed” denial, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records due to the inadequate

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

<sup>2</sup> Represented by David Clark, Esq., of Gluck Walrath, LLP (Trenton, NJ).

evidence in this matter. As such, this complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination as to whether the Custodian or any other person knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On July 1, 2015, the Council distributed its June 30, 2015, Interim Order to all parties. On August 20, 2015, this complaint was transmitted to the Office of Administrative Law (“OAL”). On September 8, 2015, the Complainant withdrew the complaint in writing to the OAL. On October 8, 2015, OAL returned the complete file jacket to the GRC.

**Analysis**

No analysis required.

**Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council dismiss the complaint because the Complainant withdrew the complaint in writing to the Office of Administrative Law on September 8, 2015. Therefore, no further adjudication is required.

Prepared By: John E. Stewart

Reviewed By: Joseph Glover  
Executive Director

October 20, 2015



State of New Jersey  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**INTERIM ORDER**

**June 30, 2015 Government Records Council Meeting**

Lisa Hurff  
Complainant

Complaint No. 2014-416

v.

Borough of Helmetta (Middlesex)  
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 2015 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:

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 another extension of time within the extended time frame 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* Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. Aside from the “deemed” denial, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records due to the inadequate evidence in this matter. As such, this complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination as to whether the Custodian or any other person knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.



Interim Order Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of June, 2015

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: July 1, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 30, 2015 Council Meeting**

**Lisa Hurff<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-416**

**v.**

**Borough of Helmetta (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of all e-mails, Facebook message posts, and OneDrive files pertaining to the Helmetta animal shelter, including any of the employees. Copies of all text messages.

**Custodian of Record:** Sandra Bohinski

**Request Received by Custodian:** October 20, 2014

**Response Made by Custodian:** October 29, 2014, and November 25, 2014

**GRC Complaint Received:** December 5, 2014

**Background<sup>3</sup>**

**Request and Response:**

On October 20, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records via e-mail.<sup>4</sup> On October 29, 2014, the seventh (7<sup>th</sup>) business day following receipt of the request, the Custodian responded in writing to request an extension of time until November 5, 2014. The Custodian states that she has located some of the requested records and asks the Complainant if she wants a partial disclosure immediately or would rather wait until November 5, 2014, to receive all of the requested records. The Complainant replied to the Custodian approximately two hours later, agreeing to the extension of time and telling her to disclose the records that are presently available. Thereafter, on November 24, 2014, the twelfth (12<sup>th</sup>) business day following expiration of the extended deadline to respond, the Custodian responded to the Complainant seeking another extension of time.

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

<sup>2</sup> Represented by David Clark, Esq., of Gluck Walrath, LLP (Trenton, NJ).

<sup>3</sup> 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.

<sup>4</sup> There may have been other records requested that are not relevant to this complaint; if so, however, it is unclear in the complaint because the Complainant failed to complete and include the Detail Summary or otherwise inform the GRC of the facts giving rise to the complaint.

### Denial of Access Complaint:

On December 5, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that she provided the request to the Custodian on October 20, 2014. The Complainant states that the Custodian did respond to the request, but the Complainant failed to provide the date of response.

The Complainant states, “[t]his is a complaint for the amount of time and lack of reasonable response from the Borough of Helmetta...I have been waiting approximately 28 business days for one OPRA request to be completed.”

The Complainant attached to the complaint two (2) pages of a three (3) page OPRA request which lists a number of items, some of which are checked; however the majority of items are not checked. The Complainant also attached to the complaint several e-mails. In addition to a copy of the Custodian’s response and the Complainant’s reply dated October 29, 2014, the Complainant attached the following e-mails:

- From the Complainant to the Custodian, dated November 3, 2014, again requesting disclosure of the records that are presently available.
- From the Complainant to the Custodian, dated November 22, 2014, advising the Custodian that the response to the request remains incomplete and that she wants the 2014 food budget for the shelter and the e-mails for council members by November 25, 2014.
- From the Custodian to the Complainant, dated November 24, 2014, seeking an extension of time until December 8, 2014.
- From the Complainant to the Custodian, dated November 24, 2014, refusing to agree to the extension of time and informing the Custodian that the Complainant will file a complaint on November 25, 2014 if the requested records are not disclosed.
- From the Custodian to the Complainant, dated November 25, 2014, attaching e-mails and Facebook messages from Christopher Slavicek and information about the food budget and Peter Karczewski.

One or more of the listed e-mails contain attachments; however, the Complainant did not include the e-mail attachments with her submission.

### Statement of Information:

On December 22, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 20, 2014, and responded in writing on November 5, 2014, November 6, 2014, November 17, 2014, December 10, 2014, December 11, 2014, December 12, 2014, December 15, 2014, and December 16, 2014.<sup>5</sup>

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<sup>5</sup> The Custodian neither described the content of these responses nor attached copies of them to the SOI; therefore, the GRC could not consider the content/relevance of same in the analysis of this complaint.

The Custodian’s SOI consists of a completed page 2 and page 5, a table, and one page of Borough letterhead. The Custodian failed to complete the document index (Item 9) of the SOI. The Custodian did, however, type at the top of the letterhead parenthetical letters A through F, which appear to correlate, but not adequately respond, to the six columns in the required document index. The Custodian provided the following statements directly beneath each alpha character:

A	B	C	D	E	F
We were waiting for Councilwoman Bruno to give us her e-mails.	The records will be kept indefinitely due to the happenings of our animal shelter.	See attached	If any redactions were made, it was phone numbers.	N/A	The records requested are not maintained or kept on Borough property. We had to wait until the Councilwoman gave it to us.

The Custodian also set forth her legal argument (Item 12) on the letterhead. The legal argument in its entirety is as follows:

“I gave everyone the e-mail from Lisa Hurff on the day I received it. I sent several e-mails to Councilwoman Yvette Bruno for her e-mails. She was reluctant to give them as she received a Tort Notice that she might be sued by Michal Cieslez and she felt that there was a family relationship.

We received flash drives from Councilwoman Bruno and ran off the e-mails. As there was so many we did not read them. Lisa Hurff would now like to receive the attachments of which we are waiting for Yvette Bruno to give them to us.”

The Custodian attached a copy of the Complainant’s OPRA request to the SOI. The Custodian also attached to the SOI a two (2) page unlabeled table containing eight (8) columns and thirty-three (33) rows. Some rows contain only a few entries in the columns; some rows contain no entries in the columns. The first column contains a total of five dates in October 2014. The second column contains the numbers 171, 172, 173, 173a and 173b. The third column contains four names: the Complainant’s name, two names of individuals listed in the October 20, 2014, request, and another unrecognized name. The fourth column is blank. The fifth column contains numbers (some sequential; some in random order). The sixth column contains entries of what appear to be segments of the request items from the October 20, 2014 request; however, other entries appear to have nothing to with this complaint.<sup>6</sup> The seventh column contains three entries dated October 29, 2014, and two entries dated November 3, 2014. The eighth column contains seven handwritten cursive entries that contain the word “sent,” followed by a date. At least one entry is incomprehensible.

<sup>6</sup> For example, the entry in the fourth row states, “I would like to opra [sic] feline #2021 & #401. I would like their intake records as well as all medical record’s [sic] from date of intake to present day, please.”



## 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).<sup>7</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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5<sup>th</sup>) business day after receipt of the complainant's March 19, 2007, OPRA request, seeking an extension of time until April 20, 2007, to fulfill the complainant's OPRA request. However, the custodian responded on April 20, 2007, stating that the requested records would be provided later in the week, and the evidence of record showed that no records were provided until May 31, 2007. The Council held that:

"[t]he Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i...however...[b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5.i. resulting in a "deemed" denial of access to the records." *Id.*

Here, similar to the facts in Kohn, GRC 2007-124, the Custodian responded in writing to the Complainant's October 20, 2014, OPRA request in a timely manner by requesting an extension until November 5, 2014, at which time the Custodian advised the Complainant that all of the records responsive to the request would be disclosed. Thereafter, however, the Custodian failed to respond in writing to the Complainant until November 24, 2014, seeking another extension of time. The November 24, 2014, response was made twelve (12) business days after the expiration of the extended deadline to respond.

Therefore, although the Custodian timely responded to the Complainant's OPRA request in writing to seek an extension of time until November 5, 2014, the Custodian's thereafter failed to respond in writing within the extended time frame.

Accordingly, 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

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<sup>7</sup> 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.

in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting another extension of time within the extended time frame, 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* Kohn, GRC 2007-124.

### **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.

The evidence of record clearly revealed there was a "deemed" denial. However beyond the "deemed" denial, the GRC experienced difficulty trying to determine which specific records were denied and the reasons therefor.

With respect to the Complainant's submission, the records relevant to the complaint varied significantly from the requested records. Moreover, upon examination of the request it was unclear to the GRC if the Complainant was seeking everything listed on the request or just the items that were checked because some items are checked but the majority of items are not checked. The complaint lacked important information, which would have been of value to the GRC, such as the Detail Summary or a clear listing of records that were alleged to have been denied.

With respect to the Borough, given that the Custodian stated she had availed herself to legal counsel, her SOI was very poorly prepared. The Custodian failed to follow the GRC's example of the requirements for the document index.<sup>8</sup> The parenthetical letters and accompanying statements the Custodian submitted in substitution of the document index were of little help to the GRC in its analysis because the Custodian failed to list the records responsive to the complaint. As such, the rest of the Custodian's responses in the makeshift document index are valueless because the prompts for those responses are linked to each listed record responsive to the request.

The table attached to the SOI did not contain a heading, much less a legend or key. For this reason, the GRC had no idea what significance the various statements, numbers, dates, and names held.

The Custodian's legal argument (Item 12) was in the nature of an excuse. The Custodian did not cite legal grounds for denying access. Rather, the Custodian blamed Councilwoman Bruno for failing to cooperate with her in the search for the requested records; and curiously, when the Custodian did receive records from the councilwoman, she certified that she did not bother to review them to determine if they were responsive to the request.

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<sup>8</sup> The instructions for completion of the document index are contained on page 3 of the SOI form and are very explicit.

In this matter the parties' submissions were woefully inadequate and provided little factual information relevant to the complaint. Indeed, the only inkling the GRC had that any records were disclosed at all was gleaned from the content of an e-mail dated November 25, 2014, from the Custodian to the Complainant, which the Complainant attached to the complaint. The e-mail referenced an attachment containing "e-mails and facebook messages from Christopher Slavicek" and "[i]nformation about the food budget and Peter Karczewski." It is unknown, however, if the disclosed items were responsive to the request.

Therefore, aside from the "deemed" denial, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records due to the inadequate evidence in this matter. As such, this complaint should be referred to the Office of Administrative Law ("OAL") for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination as to whether the Custodian or any other person knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director 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 another extension of time within the extended time frame 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* Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. Aside from the "deemed" denial, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records due to the inadequate evidence in this matter. As such, this complaint should be referred to the Office of Administrative Law ("OAL") for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination as to whether the Custodian or any other person knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: John E. Stewart

Approved By: Joseph D. Glover  
Executive Director

June 23, 2015