



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**June 28, 2016 Government Records Council Meeting**

Larry S. Loigman, Esq.  
Complainant

Complaint No. 2015-168

v.

NJ Division of Consumer Affairs  
Custodian of Record

At the June 28, 2016 public meeting, the Government Records Council (“Council”) considered the June 21, 2016 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 requested an extension of time in writing within the statutorily mandated seven (7) business days and provided a specific deadline date when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Werner v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012). See also Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O’Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); Starkey v. NJ Dep’t of Transportation, GRC Complaint Nos. 2007-315, *et seq.* (February 2009). Accordingly, there is no “deemed” denial of the Complainant’s request.

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 28<sup>th</sup> Day of June, 2016

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: June 30, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 28, 2016 Council Meeting**

**Larry S. Loigman, Esq.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-168**

v.

**NJ Division of Consumer Affairs<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of all charitable registration reports, including initial and renewal, for “Lakewood Volunteer Fire Department” or “Lakewood Fire Department” from 2000 to 2015.

**Custodian of Record:** Robert J. Campanelli  
**Request Received by Custodian:** May 27, 2015  
**Response Made by Custodian:** June 5, 2015  
**GRC Complaint Received:** June 10, 2015

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

**Request and Response:**

On May 27, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 5, 2015, the seventh (7<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing, stating that the Division of Consumer Affairs (“the Division”) would need an extension of seven (7) business days.

On June 7, 2015, the Complainant e-mailed the Custodian to deny an extension because the Custodian failed to provide an explanation for it. The Complainant stated that the OPRA request is simple and that he would file a complaint with the Government Records Council (“GRC”) if the Custodian failed to respond within the statutory time frame.

**Denial of Access Complaint:**

On June 10, 2015, the Complainant filed a Denial of Access Complaint with the GRC.

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

<sup>2</sup> Represented by Deputy Attorney General Steven Flanzman.

<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.

The Complainant disputed the Custodian's request for an extension of time, noting that the Custodian failed to provide a reason for the extension.

### Supplemental Response:

On June 12, 2015, the Custodian e-mailed the Complainant, advising that he needed an extension because the OPRA request sought fifteen (15) years of records, which were not readily available. The Custodian averred that the Charities Unit ("Unit") needed additional time to review all documentation. On the same day, the Complainant responded, stating that the Division had adequate time to compile and review records. The Complainant noted that, even if the Division needed extra time to locate records from 2000 and 2001, the Custodian still failed to provide records from 2014 or 2015. The Complainant declined to withdraw the instant complaint.

### Statement of Information:

On June 25, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on May 27, 2015. The Custodian affirmed that he forwarded the request to the Unit, which conducted a "rigorous" search of records. The Custodian certified that the Unit determined that some records prior to 2007 were destroyed in accordance with the retention schedule and that others were missing. The Custodian certified that the Unit located records from 2004, 2005, and 2007 through 2013. The Custodian further certified that 2014 and 2015 records were not available because the filing date was not until July 30, 2015, and July 30, 2016, respectively.

The Custodian certified that he responded in writing on June 5, 2015, citing the need for an extension of seven (7) business days, which the Complainant denied. The Custodian averred that he provided the Complainant with an explanation for the extension on June 12, 2015, but the Complainant responded, advising that he would not withdraw the complaint. The Custodian reiterated the Division's position that it needed an extension of time due to effort expended to locate and produce responsive records.

## Analysis<sup>4</sup>

### Timeliness

OPRA provides that a custodian may request an extension of time to respond to the complainant's OPRA request, but the custodian must provide a specific date by which he/she will respond. Should the custodian fail to provide respond by that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i).

In Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant's request on the fourth (4<sup>th</sup>) business day by seeking an extension of time to respond and providing an anticipated date by

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<sup>4</sup> The GRC notes that the Complainant did not address the disclosure of records. The Complainant solely contended in his Denial of Access Complaint that the Custodian's extension was unreasonable.

which the requested records would be made available. The complainant did not agree to the custodian's request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2<sup>nd</sup>) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that "because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i)."

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause 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 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 a specific date] to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Moreover, in Werner v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant's OPRA request. The Council concluded that because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the Custodian properly requested the extension pursuant to OPRA. In rendering the decision, the Council cited as legal authority Rivera, GRC 2009-317; Criscione, GRC 2010-68; Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O'Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315 through 317 (February 2009).

Although extensions are rooted in well-settled case law, the Council need not unquestioningly find valid every request for an extension containing a clear deadline. In Ciccarone v. NJ Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014), the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous

extensions resulted in a “deemed” denial of access, the Council looked to what is “reasonably necessary.”

In the instant matter, the Custodian sought one (1) extension of seven (7) business days to respond to the Complainant’s OPRA request. The subject OPRA request sought charitable registration renewal forms over a fifteen (15) year period for a particular volunteer file company. As noted above, a requestor’s approval is not required for a valid extension. However, the GRC notes that the Complainant denied the extension on the basis that the Custodian initially failed to provide an explanation for the extension.<sup>5</sup>

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. The GRC must next consider the amount of time the custodian already had to respond to the request. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian’s ability to respond effectively to the request.<sup>6</sup>

Initially, there is no dispute between the parties that the Custodian responded in writing to the Complainant’s OPRA request on June 5, 2015, the seventh (7<sup>th</sup>) business day from receipt of the request. There is also no dispute between the parties that at that time, the Custodian sought an extension of time to a date certain (seven (7) business days, or June 16, 2015) to further respond to the Complainant’s request.

The evidence of record indicates that, based on the nature of the OPRA request, the Custodian was working with the Unit to respond to the request. The Custodian certified in the SOI that the request at issue required the Unit to determine whether records were destroyed in accordance with its retention schedule. Further, the Custodian certified that the Unit had to determine whether records for 2014 and 2015 existed based on applicable filing dates. The Custodian ultimately disclosed 234 pages of records, with minor redactions, to the Complainant.

Given the facts of this complaint, a seven (7) business day extension of time for the Custodian to comply with the request was not unreasonable. Specifically, the Custodian had to search for fifteen (15) years of records responsive to the request, determine whether some records existed or were in storage, and make any appropriate redactions before disclosure. Those factors do not constitute an excuse for denying access, but they do influence the aspect of *reasonableness* in granting an extension of time. For these reasons, the complaint is more on point with Rivera, GRC 2009-317, and Criscione, GRC 2010-68.

Accordingly, because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided a specific deadline date when the

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<sup>5</sup> In Ciccarone, the complainant allowed for a few extensions before denying the custodian any additional time. Although the complainant’s acquiescence to extensions was a mitigating factor there, it was not the only factor on which the GRC relied to determine whether the requests for extension were reasonable.

<sup>6</sup> “Extenuating circumstances” could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency’s need to reallocate resources to a higher priority due to *force majeure*.

requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See Rivera, GRC 2009-317; Criscione, GRC 2010-68; Werner, GRC 2011-151. See also Rivera, GRC 2008-112; O’Shea, GRC 2009-223; Starkey, GRC 2007-315, *et seq.* Accordingly, there is no “deemed” denial of the Complainant’s request.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided a specific deadline date when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Werner v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012). See also Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O’Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); Starkey v. NJ Dep’t of Transportation, GRC Complaint Nos. 2007-315, *et seq.* (February 2009). Accordingly, there is no “deemed” denial of the Complainant’s request.

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

June 21, 2016