



**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**

**April 26, 2016 Government Records Council Meeting**

Gregory I. Pancza  
Complainant

Complaint No. 2015-182

v.

Township of Lacey (Ocean)  
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 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:

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); DeLuca v. Town of Guttenberg (Hudson), GRC Complaint No. 2006-126 (February 2007).
2. The Custodian certified that all records in the possession of the Township of Lacey were provided to the Complainant on June 11, 2015, when he picked them up. The Complainant provided no additional evidence in dispute of the Custodian’s certification. Therefore, the Custodian did not unlawfully deny access to the responsive records, and the Council declines to order disclosure.

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 26<sup>th</sup> Day of April, 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: May 2, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 26, 2016 Council Meeting**

**Gregory I. Pancza<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-182**

**v.**

**Township of Lacey (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of the following for pick up:

All documents, files, photographs, and notes pertaining to the reassessment of 1234 Ocean Street, Block 1141, Lot 14.01, from both the Lacey Township Tax Assessor and Realty Appraisal Company from October 2014 through May 2015

**Custodian of Record:** Veronica Laureigh

**Request Received by Custodian:** May 19, 2015

**Response Made by Custodian:** The Custodian provided no written response.

**GRC Complaint Received:** June 16, 2015

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

**Request and Response:**

On May 19, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 28, 2015, the Complainant received a phone call, advising that records responsive to the request were available for pick up. On June 11, 2015, the Complainant picked up the documents at the Custodian’s office.

On June 15, 2015, the Complainant contacted the Custodian, alleging that the two pages he picked up did not satisfy his request and asserting that “much more paperwork . . . was not provided to me as part of my request.” The Custodian replied that same day, stating that “anything the Township has a record of for your request was supplied” and that there were no other responsive documents. The Custodian additionally stated that Realty Appraisal Company

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

<sup>2</sup> Represented by Lauren R. Staiger, Esq. (Toms River, 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.

“is a private company and [does] not come under OPRA. They are only obligated to submit to us the final report based on the RFP process to perform the job.”

Denial of Access Complaint:

On June 16, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Township hired Realty Appraisal Company, located in West New York, in October 2014. The scope of the company’s work was to conduct reassessments, which are used to assess the value of properties in the town.

The Complainant asserted that the Township did not properly fulfill his OPRA request because he was provided only two documents. He stated that he e-mailed the Custodian on June 15, 2015, “in an attempt to give the Township the opportunity to rectify the matter by adhering to OPRA.” The Complainant asserted that the Custodian responded, informing him that “anything the Township has for you was provided.” The Complainant further alleged that the Custodian stated, “Realty Appraisal Company is a private company, and do not come under OPRA. They are only obligated to submit a final report based on the RFP process to perform the job.” (*sic*).

Statement of Information:

On July 1, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that her office received the Complainant’s OPRA request on May 19, 2015, and was thereafter directed to the Tax Assessor’s Office. The Custodian averred that the Tax Assessor’s Office supplied the Records Custodian with the property record cards that were in the file for Block 1141, lot 14.01, and that “the documents pertaining to the request were turned over to the requestor.”

The Custodian explained that the Township’s Request for Proposals required the successful company, Realty Appraisal, to submit a final report/recommendation of all properties for reassessment. The Custodian certified that the property record cards are the final report/recommendation for each parcel and therefore no other responsive documents exist. The Custodian averred that the property record cards were supplied to the Complainant for Block 1141, Lot 14.01.

Additional Submissions:

On February 29, 2016, the GRC wrote to the Custodian to seek additional information as to the dates of response. On that same day, the Custodian responded and certified that her office received the Complainant’s request on May 19, 2015. The Custodian averred that her staff “hand-delivered” the request to the Tax Assessor’s office that same day. The Custodian additionally certified that the Tax Assessor provided the responsive documents to her office on May 28, 2015. The Custodian stated that upon receipt, one of her staff members (Lisa) telephoned the Complainant to advise him that the records were available for pick up. The Custodian averred that the Complainant picked up the records on June 11, 2015, and paid ten cents for copies.

## 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>4</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).

Additionally, in DeLuca v. Town of Guttenberg (Hudson), GRC Complaint No. 2006-126 (February 2007), the custodian verbally advised the complainant that she would not be able to provide the requested records within the seven (7) business day time frame. The Council held that:

While the Custodian may have verbally contacted the Complainant within the statutorily mandated seven (7) business day time frame required to respond to OPRA requests, she failed to do so in writing, therefore creating a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i) and the Council's decision in Paff v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006).

Id. at 10.

In the instant matter, the Custodian received the Complainant's request on May 19, 2015. Therefore, the statutorily-mandated seven (7) day deadline to respond in writing (and grant access, deny access, seek clarification, or request an extension) was May 29, 2015. Instead, the response on that day was telephonic, as the Custodian admitted that one of her staffers telephoned the Complainant upon receipt of the responsive records from the Tax Assessor's office. There is no evidence in the record supporting that the Custodian formally responded in writing to the Complainant.

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; DeLuca, GRC 2006-126.

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<sup>4</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.

### **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.

In the instant matter, the Custodian certified that the Tax Assessor’s Office provided property record cards that were in the file for Block 1141, lot 14.01, and that “the documents pertaining to the request were turned over to the requestor.” The Custodian explained that the Township’s Request for Proposals required the successful company, Reality Appraisal, to submit a final report/recommendation of all properties for reassessment. The Custodian certified that the property record cards are the final report/recommendation for each parcel and there exist no other documents in the Township’s possession.

The Custodian certified that all records in the possession of the Township of Lacey were provided to the Complainant on June 11, 2015, when he picked them up. The Complainant provided no additional evidence to dispute the Custodian’s certification. Therefore, the Custodian did not unlawfully deny access to the responsive records, and the Council declines to order disclosure.

### **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 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); DeLuca v. Town of Guttenberg (Hudson), GRC Complaint No. 2006-126 (February 2007).
2. The Custodian certified that all records in the possession of the Township of Lacey were provided to the Complainant on June 11, 2015, when he picked them up. The Complainant provided no additional evidence in dispute of the Custodian’s certification. Therefore, the Custodian did not unlawfully deny access to the responsive records, and the Council declines to order disclosure.

Prepared By: Husna Kazmir  
Staff Attorney

March 22, 2016<sup>5</sup>

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<sup>5</sup> This complaint could not be adjudicated at the Council’s March 29, 2016 meeting due to lack of a quorum.