



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**May 22, 2018 Government Records Council Meeting**

Luis F. Rodriguez  
Complainant

Complaint No. 2016-158

v.

Kean University  
Custodian of Record

At the May 22, 2018 public meeting, the Government Records Council (“Council”) considered the May 15, 2018 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 has borne her burden of proof that she timely responded to the Complainant’s April 22, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian’s extensions of time to respond to the Complainant’s request were reasonable and not unduly excessive based upon the totality of the circumstances. See Ciccarone v. NJ Dep’t of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014); and Rodriguez v. Kean Univ., GRC Complaint No. 2016-87 (April 2018).

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 22<sup>nd</sup> Day of May, 2018

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 25, 2018**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
May 22, 2018 Council Meeting**

**Luis Rodriguez<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-158**

v.

**Kean University<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “I request any and or all documents where Kean lists its expenditures related to Wenzhou China from September 2012 to December 2012.”

**Custodian of Record:** Laura Barkley-Haelig

**Request Received by Custodian:** April 22, 2016

**Response Made by Custodian:** May 2, 2016; May 24, 2016; June 7, 2016; June 20, 2016; July 5, 2016; July 19, 2016

**GRC Complaint Received:** June 1, 2016

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

**Request and Response:**

On April 22, 2016, the Complainant submitted an (2) Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 2, 2016, the Custodian responded in writing, seeking an extension of time to respond to the Complainant’s request to until May 24, 2016. The Custodian then sought four (4) additional extensions of time.

**Denial of Access Complaint:**

On June 1, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that since filing his initial requests, the Custodian has repeatedly extended the time to respond, without sufficient explanation. Moreover, the Complainant argued that the Custodian neither consulted with him nor sought his permission when announcing the extensions. Additionally, the Complainant stated that the Custodian did not set a firm date to respond to his request, but rather extended the time to respond by fourteen (14) days. See N.J.S.A. 47:1A-5(g).

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

<sup>2</sup> Represented by Jennifer McGruther, DAG.

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

### Statement of Information:

On July 28, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 22, 2016. The Custodian certified that on that same day the request was forwarded to the “Office of Record” via e-mail. When advised that the request was still being processed, the Custodian certified that she sent an extension letter on May 2, 2016. The Custodian the certified that she send a follow-up e-mail on May 5, 2016. The Custodian certified that she was told that additional time was needed, so additional extension letters were sent on May 24, 2016, June 7, 2016, June 20, 2016, and July 5, 2016.

The Custodian certified that during a meeting held on July 14, 2016, she was told by the Office of Record that relevant documents were located, but were still being reviewed. After sending another follow-up e-mail, the Custodian certified that responsive records were delivered to her from the Office of Human Resources, and thus sent the Complainant the records on July 19, 2016.

The Custodian initially argued that the Complainant’s request does not seek an identifiable government record, and thus had no obligation to provide records. See Mason v. City of Hoboken, Docket No. A-0508-06T5, 2008 N.J. Super. Unpub. LEXIS 1660, \*7 (App. Div. Jan. 29, 2008) (noting “fatal lack of specificity” in request for “all correspondence relating to this specific government objective”). The Custodian argued that the Complainant’s request for “any and or all documents” lacks the requisite specificity. The Custodian cited Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015), where the Appellate Division held that a request for “documentation for out-of-state travel from 2012 to present by [Governor] Chris Christie and/or members of his senior staff to attend or participate in third-party funded events” was nonspecific and therefore invalid. The Custodian asserted that the Complainant’s request for any record listing expenditures relating to Wenzhou China required an open-ended search of Kean University’s files to locate what records would be responsive.

The Custodian also contended that the OPRA request is almost identical to a prior OPRA request submitted by the Complainant. The Custodian stated that based upon this earlier request, the Complainant was seeking the same document in this request but from a different time period. Therefore, the Custodian conducted a search for records similar to those from the earlier OPRA request. The Custodian certified that the process of locating and reviewing relevant records involved several employees, thus necessitating the extensions of time needed to provide a complete response.

The Custodian also argued that extensions of time to respond to OPRA requests are appropriate under certain circumstances, stating they “reflect the Legislature’s intention to balance the requestor’s interest in prompt access to identifiable records and the operational needs of government.” N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div.), certif. denied, 190 N.J. 394 (2007). The Custodian noted that factors considered when assessing the reasonableness of extensions include whether or not the record is stored or archived, or “if a request for access would to a government record would substantially disrupt agency operations.” N.J.S.A. 47:1A-5(i). The Custodian also quoted: “[t]here is an obvious connection

between the specificity of the request and custodian's ability to provide a prompt reply." N.J. Builders Ass'n, 390 N.J. Super. at 178.

### Additional Submissions

On August 9, 2016, the Complainant responded to the Custodian's SOI, arguing that the Custodian failed to provide any mitigating or unusual circumstances to justify the extensions. Additionally, the Complainant objected to the Custodian's failure to identify each office she reached out to locate responsive records.

## Analysis

### 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 which the requested records would be made available. The complainant did not consent 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. See also Rivera, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone v. NJ Dep't of Treas., 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." See also Rodriguez v. Kean Univ., GRC Complaint No. 2015-77 (September 2017).

The subject OPRA request sought "any and or all documents where Kean lists its expenditures related to Wenzhou China from September 2012 to December 2012." The Custodian extended the response time on five (5) occasions for approximately sixty-one (61) business days, accounting for public holidays. As noted above, a requestor's approval is not required for a valid extension. However, 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. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already had to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to respond effectively to the request.<sup>4</sup> Id.

Although the Custodian does not require permission to extend the time to respond to an OPRA request, the burden remains with the Custodian to justify the need for such extension(s). That burden increases when the extension of time is measured in months rather than days. However, the Custodian has met her burden in this case. Although the Custodian extended the time period multiple times, that in itself does not make the extensions unreasonable. In Rodriguez v. Kean Univ., GRC Complaint No. 2016-87 (April 2018), the Custodian sought four (4) extensions of time to respond. However, the Council found them reasonable based in part on the nature of the OPRA request and how it was framed. Similarly, in this matter while the Custodian provided only two (2) responsive records, the request's lack of specificity as to the type records sought would reasonably lengthen the time taken to conduct a thorough search. Thus, while the Complainant's

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<sup>4</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*.

OPRA request could arguably be rejected as invalid, the Custodian elected to accommodate the Complainant and conduct a search for records

Therefore, the Custodian has borne her burden of proof that she timely responded to the Complainant's April 22, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian's extensions of time to respond to the Complainant's request were reasonable and not unduly excessive based upon the totality of the circumstances. See Ciccarone, GRC 2013-280; and Rodriguez, GRC 2016-87.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that the Custodian has borne her burden of proof that she timely responded to the Complainant's April 22, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian's extensions of time to respond to the Complainant's request were reasonable and not unduly excessive based upon the totality of the circumstances. See Ciccarone v. NJ Dep't of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014); and Rodriguez v. Kean Univ., GRC Complaint No. 2016-87 (April 2018).

Prepared By: Samuel A. Rosado  
Staff Attorney

May 15, 2018