



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
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**PHILIP D. MURPHY**  
*Governor*

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

**FINAL DECISION**

**January 30, 2018 Government Records Council Meeting**

Luis Rodriguez  
Complainant

Complaint No. 2016-41

v.

Kean University  
Custodian of Record

At the January 30, 2018 public meeting, the Government Records Council (“Council”) considered the January 23, 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 OPRA request based on warranted and substantiated extensions. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep’t of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

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 30<sup>th</sup> Day of January, 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: February 2, 2018**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
January 30, 2018 Council Meeting**

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

**GRC Complaint No. 2016-41**

v.

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

**Records Relevant to Complaint:** “I request a copy of the resume for the person in the position for whom the H1-B and/or green card visa was filed: Professional Services Specialist IV.”

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

**Request Received by Custodian:** November 30, 2015

**Response Made by Custodian:** December 9, 2015; December 23, 2015; January 12, 2016; January 26, 2016; February 9, 2016; February 23, 2016; March 4, 2016.

**GRC Complaint Received:** February 2, 2016

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

**Request and Response:**

On November 30, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 9, 2015, the Custodian responded in writing, seeking an extension of time until December 23, 2015, to respond to the Complainant’s request. The Custodian then sought additional extensions of time on December 23, 2015, January 12, 2016, and January 26, 2016.

**Denial of Access Complaint:**

On February 2, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that since filing his initial request, the Custodian has sent correspondence extending her time to respond six (6) times. The Complainant stated that he received the first extension to respond on the seventh (7<sup>th</sup>) business day after receipt of the OPRA request and subsequently received five (5) additional notices to extend thereafter.

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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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

The Complainant asserted that the Custodian knowingly and willfully violated OPRA. The Complainant asserted that prior OPRA requests for resumes of H1-B employees have been responded to comparatively timely over the current matter. The Complainant contended that the search process for the resume of a Professional Service Specialist IV should be the same, and therefore the repeated delays are evidence of an intentional delay on the Custodian's part.

Supplemental Response:

The Custodian sought additional extensions of time on February 9, 2016 and February 23, 2016. On March 4, 2016, the Custodian provided fifty-one (51) pages of responsive records with redactions.

Statement of Information:

On March 4, 2016, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on November 30, 2015. The Custodian then certified that she sought extensions of time to respond on December 9, 2015, December 23, 2015, January 12, 2016, January 26, 2016, February 9, 2016, and February 23, 2016.

The Custodian certified that because the OPRA request did not include a name for the employee in question nor an approximate date when the employee was hired, the request was provided to the Office of Human Resources ("OHR") for review. The Custodian then certified that OHR identified all currently active employees employed under the aforementioned title. Thereafter, the Custodian sought several extensions of time to allow for review of the resumes for any relevant OPRA exemption. A disposition letter and fifty-one (51) pages of responsive records were provided to the Complainant on March 4, 2016.

The Custodian rejected the Complainant's presumption that a resume search using the aforementioned job title in this matter should take no more time than a resume search for H1-B sponsored employees. The Custodian contended that the Complainant's request relied upon third-party information, and thus needed to be verified for accuracy prior to conducting a full search for filled positions under the identified title. The Custodian further argued that once she located any responsive resumes, they would need to be reviewed for privacy considerations.

Therefore, the Custodian contended that the Complainant's request is distinguishable from prior resume requests since the title at issue is held by several university employees, requiring a more extensive search. Thus, the extensions were justified to ensure a thorough search and adherence to privacy considerations. The Custodian requested that the GRC dismiss the case, as there was no unlawful denial of access, and that the matter is moot since the Complainant has obtained the requested records.

Additional Submissions:

On April 12, 2016, the Complainant e-mailed the GRC with a response to the Custodian's SOI. The Complainant reiterated his position that the issue is with the length of time it took the

Custodian to produce the responsive records, and not whether he should have access to them in the first place.

## Analysis

### Timeliness

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.

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 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. N.J. 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. N.J. 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.”

In the instant matter, the Custodian sought multiple extensions for the Complainant’s November 30, 2015 OPRA request as follows:

<b>Date of Request for Extension</b>	<b>New Deadline for Response</b>	<b>Reason for Extension</b>
December 9, 2015	December 23, 2015	So that the OPRA request may “be appropriately processed.”
December 23, 2015	January 12, 2015	So that the OPRA request may “be appropriately processed” and due to the University’s pending closure for holiday break.
January 12, 2016	January 26, 2016	So that the OPRA request may “be appropriately processed.”
January 26, 2016	February 9, 2016	So that the OPRA request may “be appropriately processed.”
February 9, 2016	February 23, 2016	So that the OPRA request may “be appropriately processed.”
February 23, 2016	March 8, 2016	So that the OPRA request may “be appropriately processed.”

The Custodian extended the response time on six (6) occasions for a total exceeding sixty (60) 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.

Regarding the request, the Complainant sought the resume for the H1-B or green card visa employee with the title Professional Services Specialist IV. The Custodian claimed that the Complainant's request lacked specificity, and therefore required more time to complete than prior requests for employee resumes. A review of the request on its face supports the claim of a lack of specificity; the name of the employee was not provided, nor an approximate date of hire. Once verified and located, the Custodian reviewed the responsive resumes for privacy redactions.

In determining whether the extensions were ultimately unreasonable, the GRC looks to its prior decision in Rodriguez v. Kean Univ., GRC Complaint No. 2016-128 (November 2017), for instruction. There, the Council found that the Custodian's thirty (30) business day extension to provide seventeen (17) pages of responsive records was reasonable, because of the Custodian's complications with the wording and interpretation of the OPRA request. Furthermore, the Custodian made note of the assistance she sought and received from other employees in order to fulfill the request.

In the instant matter, the facts are somewhat similar to Rodriguez. The Complainant's OPRA request lacked specificity, evidenced by return of fifty-one (51) responsive records in the request for one individual. Although the extension length was not insignificant, the GRC recognizes the request's distinction from other resume requests, and the time needed to review the resumes for redactions. Therefore, the GRC finds that extending the response time for the OPRA request to the extent demonstrated in the instant matter was not excessive.

Accordingly, the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request based on warranted and substantiated extensions. N.J.S.A. 47:1A-6; Ciccarone, GRC 2013-280. Therefore, no "deemed" denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

### **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 OPRA request based on warranted and substantiated extensions. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep't of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). Therefore, no "deemed" denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Prepared By: Samuel A. Rosado  
Staff Attorney

January 23, 2018

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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*.