



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 26, 2019 Government Records Council Meeting

Shamsiddin Abdur-Raheem
(o/b/o Pro-Spec Corporation)
Complainant

Complaint No. 2017-10

v.

NJ Office of the Attorney General,
Division of Criminal Justice
Custodian of Record

At the March 26, 2019 public meeting, the Government Records Council (“Council”) considered the March 19, 2019 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 his burden of proof that he timely responded to the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, no “deemed” denial of access occurred here. 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 26th Day of March, 2019

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: March 29, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
March 26, 2019 Council Meeting**

**Shamsiddin Abdur-Raheem¹
Complainant**

GRC Complaint No. 2017-10

v.

**N.J. Office of the Attorney General,²
Division of Criminal Justice
Custodial Agency**

Records Relevant to Complaint:

1. “[A]ny and all emails received by and/or sent from the government email accounts/servers of Andrew C. Fried, Deputy Attorney General, referring to or referencing Shamsiddin Abdur-Raheem, Shamsiddi Abdur-Raheem and/or the case of State v. Shamsiddi Abdur-Raheem, Indictment No. 10-08-00102.”
2. “Any and all e-mails received by and/or sent from the government email account/servers of Jennifer E. Kmiecjak, Deputy Attorney General, Attorney No. 037062010, kmiecjakj@njdcj.org, referring to or referencing Shamsiddin Abdur-Raheem Abdur-Raheem and/or case of State v. Shamsiddin Abdur-Raheem. Docket No. A-2077-12T4.”

Custodian of Record: Robert McGrath

Request Received by Custodian: September 30, 2016

Response Made by Custodian: October 12, 2016; November 2, 2016

GRC Complaint Received: January 13, 2017

Background³

Request and Response:

On September 19, 2016, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On October 12, 2016, the seventh (7th) business day after receipt of the OPRA request, the Custodian responded in writing stating that additional time was required to complete the requests, and that a response would be provided on or before November 2, 2016.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Suzanne Davies.

³ 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.

Shamsiddin Abdur-Rahim v. N.J. Office of the Attorney General, Division of Criminal Justice, 2017-10 – Findings and Recommendations of the Council Staff

Denial of Access Complaint:

On January 13, 2017 the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he received the Custodian’s October 12, 2016 initial reply to his requests, seeking additional time to respond. The Custodian then contended that he did not receive any follow up response on or before November 2, 2016.

The Complainant contended that the records are government records subject to OPRA, and that the Custodian should be ordered to release them.

Statement of Information:

On February 24, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA requests on September 30, 2016. The Custodian certified that the requests were forwarded to the Office of Information Technology to search for responsive records. The Custodian certified that he initially responded in writing on October 12, 2016, extending the time frame to respond through November 2, 2016.

The Custodian certified that he responded to both requests on November 2, 2016 via regular mail. Regarding OPRA request No. 1, the Custodian provided one (1) responsive e-mail, redacting a cell phone number. The Custodian also stated that the remaining responsive records were omitted because they contained inter/intra-agency advisory, consultative, or deliberative material, or contained attorney-client or attorney work product privileged information. N.J.S.A. 47:1A-1.1.

Regarding OPRA request No. 2, the Custodian provided two (2) e-mails, redacting two (2) cell phone numbers. The Custodian also denied access to the remaining responsive records on the same grounds as request No. 1.

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).⁴ 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 dated October 31, 2007).

⁴ 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.

Shamsiddin Abdur-Rahim v. N.J. Office of the Attorney General, Division of Criminal Justice, 2017-10 – Findings and Recommendations of the Council Staff

Here, the Complainant submitted his Denial of Access Complaint arguing the Custodian failed to respond to his September 19, 2016 OPRA requests within the extended deadline. In the SOI, the Custodian certified that he received the OPRA requests on September 30, 2016. The Custodian further certified that he responded in writing on October 12, 2016, extending the deadline to respond through November 2, 2016. The Custodian also affirmed that he responded to both requests on November 2, 2016, the last day of the deadline. The Custodian included in his SOI the responses to both requests, each dated November 2, 2016.

A review of the evidence of record supports a finding that the Custodian did not violate OPRA's response time provisions. Specifically, the Custodian timely responded to the Complainant's requests on October 12, 2016, obtaining an extension of time to respond until a date certain. The Complainant acknowledged receipt of this correspondence. The record also indicates that the Custodian responded to both requests on November 2, 2016 via regular mail, delivered to the same address as the earlier correspondence.

Therefore, the Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, no "deemed" denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).⁵

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, no "deemed" denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).

Prepared By: Samuel A. Rosado
Staff Attorney

March 19, 2019

⁵ The GRC does not address the records withheld from disclosure and those provided with redactions because they were not raised by the Complainant at any point during the pendency of this complaint. Shamsiddin Abdur-Rahim v. N.J. Office of the Attorney General, Division of Criminal Justice, 2017-10 – Findings and Recommendations of the Council Staff