



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**July 30, 2019 Government Records Council Meeting**

John Allen  
Complainant

Complaint No. 2017-155

v.

Borough of Stratford (Camden)  
Custodian of Record

At the July 30, 2019 public meeting, the Government Records Council (“Council”) considered the July 23, 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 June 26, 2017 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 to the totality of the circumstances. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See also Ciccarone v. N.J. Dep’t of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014); Werner v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012).

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 July 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: August 2, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
July 30, 2019 Council Meeting**

**John Allen<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-155**

v.

**Borough of Stratford (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “[C]opies of all job postings, applications received, resumes received, cover letters received, offer letters and rejection letters sent for the position of clerk and deputy clerk for the time period of 1/1/2016 – 4/1/2017 to include email records.”

**Custodian of Record:** Ben Angeli

**Request Received by Custodian:** June 26, 2017

**Response Made by Custodian:** June 26, 2017

**GRC Complaint Received:** July 28, 2017

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

**Request and Response:**

On June 24, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 26, 2017, the Custodian responded in writing stating that additional time was needed to fulfill the request because of the size. The Custodian stated that a response would be provided by August 8, 2017. That same day, the Complainant replied, stating that a thirty (30) day delay was unreasonable and that he would not consent to the extension.

**Denial of Access Complaint:**

On July 28, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian tried to dissuade the public from requesting records by mentioning the potential costs in fulfilling requests. The Complainant did not elaborate further on the circumstances of his OPRA request.

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

<sup>2</sup> Represented by Eric J. Riso, Esq., of Platt & Riso, P.C. (Stratford, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

### Supplemental Response:

On August 8, 2017, the Custodian responded in writing to the Complainant's OPRA request, providing records with redactions made to personal identifiers pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-5(a).

### Statement of Information:

On August 11, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on June 26, 2017. The Custodian certified that he responded in writing on June 26, 2017, stating that an extension of time was needed and sought a time extension to August 8, 2017 to fulfill the request. Thereafter, the Custodian certified that he responded on August 8, 2017, providing responsive records with redactions.

The Custodian argued that the OPRA request was not denied and that responsive records were provided. The Custodian asserted that the New Jersey Supreme Court and GRC have held that custodians may seek extensions of time beyond the seven (7) business day deadline. See Mason v. City of Hoboken, 196 N.J. 51, 78 (2008); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 183 (App. Div.), certif. denied, 190 N.J. 394 (2007).

The Custodian maintained that despite responding on the first (1<sup>st</sup>) business day after receiving the OPRA request to seek an extension of time, the Complainant unreasonably and without justification refused to grant allow the extension. The Custodian asserted that notwithstanding the Complainant's filing of the instant complaint, he responded to the Complainant's OPRA request within the extended time frame. The Custodian argued that as a result, the GRC should conclude that there has been no unlawful denial of access. See Kohn v. Twp. of Livingston, GRC Complaint Nos. 2009-203 & 2009-211 (January 2011); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).

## 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 dated October 31, 2007).

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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.

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. N.J. Dep't of Transp., GRC Complaint Nos. 2007-315 through 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.

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." Id.

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. Id. 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>5</sup> Id.

In the instant complaint, the request sought six (6) types of records over a fifteen (15) month period. In response, the Custodian sought an extension of time once for a total of twenty-three (23) additional business days. The result was approximately thirty-five (35) pages of records, with most containing redactions. In consideration of the above circumstances, the GRC finds that the response time for the OPRA request was not excessive due to the nature of the request and the time needed to review each record for potential redactions.

Therefore, the Custodian has borne his burden of proof that he timely responded to the Complainant's June 26, 2017 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 to the totality of the circumstances. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See also Ciccarone, GRC 2013-280; Werner, GRC 2011-151.<sup>6</sup>

### **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 June 26, 2017 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 to the totality of the circumstances. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See also Ciccarone v. N.J. Dep't of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014); Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012).

Prepared By: Samuel A. Rosado  
Staff Attorney

July 23, 2019

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<sup>5</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*.

<sup>6</sup> The GRC does not address the records provided with redactions because they were not raised by the Complainant at any point during the pendency of this complaint.