



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**July 28, 2020 Government Records Council Meeting**

Litty Sue Jones  
Complainant

Complaint No. 2018-110

v.

Township of Teaneck (Bergen)  
Custodian of Record

At the July 28, 2020 public meeting, the Government Records Council (“Council”) considered the July 21, 2020 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 request based on warranted and substantiated extensions. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014). See also Twp. of Teaneck v. Jones, 2017 N.J. Super. Unpub. LEXIS 584 (March 9, 2017). 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 28<sup>th</sup> Day of July 2020

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: July 30, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 28, 2020 Council Meeting**

**Litty Sue Jones<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-110**

**v.**

**Township of Teaneck (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via U.S mail of:

1. List of all Township of Teaneck (“Township”) owned properties by block, lot, and street address, as well as property deeds “and tax paperwork and accounting doc[ument]s” from January 2017 through May 2018.
2. Report showing tax exempt properties for year 2018 (Township, residential, commercial, churches, synagogues, and other tax-exempt properties).
3. List of all Township properties “exempt from paying taxes . . . from Tax Assessors documents and [Township] Accounting Clerics and Tax Assessor and Collectors documents” between January 1, 2017 and May 11, 2018.

**Custodian of Record:** Issa A. Abassi

**Request Received by Custodian:** May 10, 2018

**Response Made by Custodian:** May 21, 2018

**GRC Complaint Received:** June 15, 2018

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

**Request and Response:**

On May 10, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 21, 2018, the Custodian responded in writing stating that an extension of 120 business days, or until November 9, 2018, was necessary due to “a recent influx of OPRA requests received” by the Township.

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

<sup>2</sup> Represented by Michael D. Witt, Esq., of Chasan, Lamperello, Mallon, & Cappuzzo, P.C. (Secaucus, 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.

### Denial of Access Complaint:

On June 15, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the Custodian’s extension was in “bad faith” and effectively an unlawful denial of access under OPRA. The Complainant noted that she submitted other requests that the Township fulfilled within thirty (30) days.

### Statement of Information:

On July 18, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 10, 2018. The Custodian certified that he had not yet performed a search as of this submission. The Custodian certified that he responded in writing on May 21, 2018 extending the response time frame through November 9, 2018.

The Custodian certified that as the Township’s Municipal Clerk, he engaged in a vast array of duties, which includes serving as the custodian of record under OPRA. N.J.S.A. 47:1A-1.1. The Custodian noted that he also served as the Township’s *de facto* Deputy Chief Financial Officer. The Custodian further noted that in addition to himself, the Township employs two (2) full-time and one (1) part-time deputy clerk. The Custodian certified that at the time that he received the Complainant’s OPRA request, the Township was addressing approximately 228 outstanding OPRA requests. The Custodian affirmed that a vast majority of those OPRA requests (175 in total) were filed by a single individual: Elie C. Jones. The Custodian noted that most of Mr. Jones requests contained multiple parts, which increased the pending number of individual request items to 500 or 600. The Custodian stated that the Complainant was “approximately No. 230 in line for a response.” The Custodian argued that this was not a judgement call by the Township; rather, this delay was caused by Mr. Jones. The Custodian further argued that the instant complaint is a direct consequence of Mr. Jones’ actions.

The Custodian argued that he lawfully sought an extension of time to respond to the Complainant’s OPRA request. The Custodian asserted that OPRA allowed for extensions. N.J.S.A. 47:1A-5(g). The Custodian noted that the GRC maintained on its website a template extension letter.<sup>4</sup> The Custodian argued that the Township’s circumstances described above at the time of the extension justified his actions. The Custodian also affirmed that during the time of the subject OPRA request, he conducted a municipal election on May 8, 2018 and was preparing for a primary election on June 5, 2018. The Custodian further affirmed that he had to process thirty-three (33) liquor license renewal applications in order to keep those businesses in operation. The Custodian asserted that when added to his regular duties, he could not also effectively address the numerous OPRA requests pending before the Township. The Custodian argued that he could not simply neglect all other duties to answer the substantial number of OPRA requests submitted to the Township. The Custodian further argued that the Township did not have unlimited resources to hire employees or authority to require them to work overtime. The Custodian thus argued that, rather than deny the request out right, he chose to extend the time frame out of necessity.

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<sup>4</sup> <https://www.state.nj.us/grc/pdf/Custodian's%20Response%20Template%20-%20Request%20for%20Extension%20of%20Time.doc>

The Custodian additionally argued that the GRC should dismiss this complaint because under the “doctrine of unclean hands,” the Complainant is “guilty of bad faith . . . in the underlying transaction.” Pellitteri v. Pellitteri, 266 N.J. Super. 56, 65 (App. Div. 1993). The Custodian alleged that the Complainant here is assuredly Mr. Jones. The Custodian averred that attached were two (2) OPRA requests received on April 30, 2018 purportedly submitted by the Complainant and Justin E. Jones, the mother and son of Mr. Jones. The Custodian averred that in reviewing and comparing the OPRA request at issue here, the April 30, 2018 OPRA requests, and three (3) additional OPRA requests filed by Mr. Jones, the contact information and handwriting is identical. The Custodian thus argued that Mr. Jones clearly filed those OPRA requests, as well as the one at issue here. The Custodian asserted that it appeared that Mr. Jones continued to “employ this ruse before the [GRC]” through submission of this complaint. The Custodian requested that should the GRC doubt this assertion, it should conduct a fact-finding hearing and require the Complainant and Mr. Jones to appear for questioning.

The Custodian argued that Mr. Jones’ inundation of OPRA requests has rendered the Township OPRA process impossible. The Custodian asserted that the Township has been consumed by Mr. Jones’ OPRA requests, noting that since May 10, 2018, he submitted an additional 95 OPRA requests. The Custodian argued that this complaint illustrated Mr. Jones’ “nefarious, damaging use” of OPRA to “harm a municipality by clogging up its Clerk’s Office with a multitude of OPRA requests.” The Custodian contended that Mr. Jones has substantially disrupted the Township’s operations through his abusive requesting patterns. The Custodian argued that Mr. Jones’ actions have also adversely affected the Township’s ability to respond to the general public’s OPRA requests.

The Custodian contended that Mr. Jones’ abusive misuse of governmental resources is not the Township’s alone. The Custodian stated that in In Re: Jones, Docket No. BER-L-2683-18 (June 29, 2018), the Superior Court barred Mr. Jones from filing any criminal, civil, or municipal code complaints without approval by the Honorable Bonnie J. Mizdol Bergen County Assignment Judge of the Superior Court (“A.J.S.C.”). The Custodian noted that the A.J.S.C. acknowledged in her decision that that Mr. “Jones’ vexatious tactics are clearly demonstrated by ramped up [OPRA] requests.” Jones, slip op. at 11. The Custodian further noted that Mr. Jones’ OPRA practices are at the center of Twp. of Teaneck v. Jones, Docket No. A-0840-17T3.<sup>5</sup> The Custodian argued that just as the Council takes swift action against public agencies that violate OPRA, it should take an equally tough stance on requestors abusing OPRA. The Custodian further asserted that the GRC should take the A.J.S.C.’s lead by denying the instant complaint and requiring Mr. Jones and his family members to seek approval to file Denial of Access Complaints from the Superior Court.

## Analysis

### Preface

As part of the SOI filing, the Custodian alleged that Mr. Jones was the actual OPRA requestor in this matter. The Custodian argued that the request at issue here was filed by Mr. Jones as part of an ongoing campaign meant to “harm [the Township] by clogging up its Clerk’s Office

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<sup>5</sup> The Appellate Division rendered a decision in this case on July 12, 2019. Twp. of Teaneck v. Jones, 2019 N.J. Super. Unpub. LEXIS 1606 (App. Div. 2019).

with a multitude of OPRA requests.” In support of his argument, the Custodian points to multiple examples of OPRA requests submitted by either Mr. Jones or J. Jones and they commonality in the records sought and handwriting. The Custodian also noted that Mr. Jones had a history of harassing conduct towards the municipality, citing actions decided by or pending before the courts. In Re: Jones, Docket No. BER-L-2683-18; Twp. of Teaneck, Docket No. A-0840-17T3. The Custodian thus requested that the Council hold a fact-finding hearing to allow the Complainant and Mr. Jones to be cross-examined. The Custodian further requested that the GRC require Mr. Jones and his family members, including the Complainant, to receive authorization from the courts to file future Denial of Access Complaints.

Initially, the GRC recognizes that the facts presented in this complaint bring to the forefront a complicated history between the Township and Mr. Jones. Much of that history was laid forth in Twp. of Teaneck v. Jones, 2017 N.J. Super. Unpub. LEXIS 584 (March 9, 2017). It should also be noted that there, the Township advanced arguments regarding Mr. Jones’ actions, including the allegation that he was submitting OPRA requests under the Complainant’s, and others, names. Ultimately, the court denied the Township’s request for “preliminary declaratory relief and preliminary injunctive relief.” Id. at 18.

In the instant complaint, the Custodian has reasserted his arguments regarding Mr. Jones’ alleged actions and their impact on the instant complaint. However, that argument and the OPRA request evidence provided suffer two (2) significant flaws. First and foremost is the fact that OPRA allows for anonymous requests. N.J.S.A. 47:1A-2.2(c); N.J.S.A. 47:1A-5(i). While not defined under OPRA, it is logical to conclude that individuals may choose to file OPRA requests under pseudonyms in order to remain anonymous. In fact, the GRC has previously adjudicated at least one complaint filed by some identifying himself as John Doe. See Doe v. Twp. of Toms River (Ocean), GRC Complaint No. 2017-56 (November 2018). Additionally, while a review of the various OPRA requests attached to the SOI supports that the requests were likely composed by the same individual, the signatures do not match. Thus, even if Mr. Jones composed each of the OPRA requests, the distinguished signatures indicate that the identified individuals likely signed the requests on their own. For these reasons, the GRC declines to pursue the remedies requested by the Custodian at this time.

### **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 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 Treasury, 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 one (1) extension of 120 business days, or until November 9, 2018, to respond to the subject OPRA request. As noted above, a requestor's approval is not required for a valid extension. However, it should be noted that the Complainant did not object to any extension prior to filing this complaint.

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>6</sup> Id.

Regarding the request, the Complainant's OPRA request item No. 1 sought a list of all Township-owned properties "by lot, block[,] and street address from . . . property deeds and tax paperwork and accounting docs from" January 1, 2017 to the date of the OPRA request. The Complainant's OPRA request item No. 2 sought a report showing tax exempt properties for 2018. The Complainant's OPRA request item No. 3 sought "all [Township] properties exempt from paying taxes" between January 1, 2017 and the date of the OPRA request.

In the SOI, the Custodian explained his reasoning for extending the response time frame until November 9, 2018. Those reasons included the number of duties and obligations of the Custodian, as well as that his office only employed two (2) full-time and one (1) part-time employee. However, of more importance, the Custodian stated that at the time of the subject OPRA request, the Township was addressing 228 OPRA requests. The Custodian noted that the subject request was No. 230 in line for a response. The Custodian stated that Mr. Jones filed 175 of those OPRA requests that totaled between 500 and 600 individual request items. The Custodian argued that instead of denying the OPRA request outright, he chose to extend the deadline as an absolute necessity.

From the Custodian's receipt of the Complainant's OPRA request, he sought 120 business days to respond. Thus, the Custodian sought, in addition to the original seven (7) business days, an extension of six (6) full months of business days.

In determining whether the extension before the Council was substantiated, the GRC must look to the court's discussion from Twp. of Teaneck, 2017 N.J. Super. Unpub. LEXIS 584 for instruction. The GRC notes that although unpublished, the court's decision provides insightful language impacting the extension issue here. There, the court opined at length on the number of options available to a custodian when facing a problematic requestor:

The Township is not powerless when faced with abusive, unreasonable, coercive, OPRA requests. It can deny such requests. In response, the requestor may abandon his requests, or may seek relief before the GRC or in court. The requestor may abandon or withdraw some requests, and press on as to others, as defendant herein has done. Served with suit papers in this case, the Defendant, through counsel, abandoned two-hundred ninety (290) of his 380 OPRA requests, leaving ninety (90) to be addressed by the Township, strong evidence of an acknowledgement of the unreasonableness of the defendant's mass-filing of OPRA requests.

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<sup>6</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*.

In response to requestor-initiated litigation, the custodian retains the defense that, faced with requests that would “substantially disrupt agency operations”, it attempted “to reach a reasonable solution that accommodates the requestor and the agency”, but requestor refused reasonable solutions and it therefore properly denied the requests. N.J.S.A. 47:1A-5(g). In addition, a custodian may, in defense of any such requestor-initiated action, demonstrate that it fashioned a reasonable “special service charge” which Defendant refused to tender. N.J.S.A. 47:1A-5(c).

[Id. 13-14.]

Here, the Custodian was clearly faced with a situation like the one explored in Twp. of Teaneck, 2017 N.J. Super. Unpub. LEXIS 584. In addition to the OPRA request at issue here, the Custodian certified in the SOI that he was tasked with addressing 230 OPRA requests, a vast majority of which were filed by Mr. Jones. Further, the evidence supports that Mr. Jones played a direct role in filing the instant OPRA request and resulting Denial of Access Complaint. Based on this, and as provided by the court, the Custodian reached the conclusion that he would attempt to accommodate the request as an alternative to denying it. This set up the potential for the Custodian to deny the subject OPRA request on the basis that it would substantially disrupt agency operations N.J.S.A. 47:1A-5(g). In fact, the Custodian asserted just that in the SOI as it related to the allegation that Mr. Jones was behind the subject OPRA request. Notwithstanding, it is of no coincidence that the Custodian chose to extend the time frame based on his knowledge of the court’s decision in Twp. of Teaneck. Thus, the GRC is persuaded that a time extension to respond to the subject OPRA request is warranted here.

As to the reasonableness of the length of the time extension, the GRC finds that the evidence before it supports same. This is not to say that the sheer volume of requests alone justifies a considerable extension of time to respond to an individual OPRA request. Many public agencies in the State have a high volume of pending OPRA requests but the agencies appear to have been given sufficient resources to facilitate faster response times to records requests. However, it is clear here that Mr. Jones and others, including the Complainant, engaged in a coordinated OPRA campaign against the Township. Without assuming the intent of these actors, this campaign is well-documented in the record before the Council, as well as in the record on review in the Twp. of Teaneck appeal. It is within this notable set of these facts that the GRC agrees that an aggressive extension was reasonable and necessary here.

Accordingly, the Custodian has borne his burden of proof that he 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. See also Twp. of Teaneck, 2017 N.J. Super. Unpub. LEXIS 584. 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 Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he 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 Treasury,



GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014). See also Twp. of Teaneck v. Jones, 2017 N.J. Super. Unpub. LEXIS 584 (March 9, 2017). 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: Frank F. Caruso  
Executive Director

July 21, 2020