



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**

**December 15, 2020 Government Records Council Meeting**

Frank J. Festa, Jr.  
Complainant

Complaint No. 2019-166

v.

Township of Marlboro (Monmouth)  
Custodian of Record

At the December 15, 2020 public meeting, the Government Records Council (“Council”) considered the December 8, 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 her burden of proof that she 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). Further, the Council need not address whether an unlawful denial of access occurred because the Custodian certified, and the record reflects, that she disclosed all records that existed. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

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 15<sup>th</sup> Day of December 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: December 17, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 15, 2020 Council Meeting**

**Frank J. Festa, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-166**

v.

**Township of Marlboro (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

March 10, 2017 OPRA request: Electronic copies via e-mail regarding Application No. 91-0271 and the Palmieri Building:

1. “[A]ny Council Resolutions or Letters to or from any Municipal Official with knowledge of an authority over the approval of the project or over the land.”
2. “Copies to and from the [New Jersey Department of Environmental Protection (“NJDEP”)] related to the project.”

March 22, 2017 OPRA request: Electronic copies via e-mail regarding Block 249, Lot 4:

1. NJDEP map showing “the Pine Brook with a copy of a map showing the wetlands in the area.
2. “Do you have anything in your position (sic) . . . showing the wetlands on Block 294, Lot 4?”
3. “Do you have anything in your position (sic) . . . that would prevent the [Township of Marlboro (“Township”)] form granting the Application for Grading and Clearing Permit [(“Application”)] . . . submitted on July 23, 2015?”

**Custodian of Record:** Suzanne Branagan

**Request Received by Custodian:** March 13, 2017; March 27, 2017

**Response Made by Custodian:** Unknown; March 30, 2017

**GRC Complaint Received:** August 16, 2019

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

---

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

<sup>2</sup> Represented by Brian P. Trelease, Esq., of Rainone, Coughlin, Minchello, LLC (Iselin, 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.

### Request and Response:

On March 10, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On an unknown date, the Custodian responded in writing advising the Complainant that the Township could not identify the records sought because the application number and block/lot identified in the request were incorrect and old. The Custodian stated that should the Complainant provide the current block and lot information, she would forward the OPRA request to the Township’s Planning and Engineering Department. The Custodian noted that she left a voicemail message for the Complainant on March 16, 2017. On a subsequent unknown date, the Custodian e-mailed the Complainant acknowledging his request to inspect the responsive file. The Custodian noted that the file was “unavailable due to [E]ngineering [O]ffice cleanup activity.” The Custodian stated that she would contact the Complainant when the file was returned to the office.

On March 22, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 30, 2017, the third (3<sup>rd</sup>) business day after receipt of the subject OPRA request, the Custodian responded in writing stating that upon review of the block/lot file and Graphic Information System (“GIS”) information, she could confirm that map attached to the subject OPRA request contained the same wetland information on file with the Township. The Custodian also disclosed the Application advising that it contained notations as to why same was denied.

On April 20, 2017, the Custodian again responded in writing to the Complainant’s March 10, 2017 OPRA request. Therein, the Custodian stated that the Engineering Office received and forwarded to her the Complainant’s voicemail message seeking another inspection of the relevant file. The Custodian averred that the Complainant’s OPRA request was completed as of this date when the Complainant reviewed the file. The Custodian stated that during the inspection, the Complainant reviewed a file from the 1980s and 1990s, as well as GIS information. The Custodian noted that the Complainant received a GIS excerpt showing the property. The Custodian finally stated that should the Complainant need copies of certain records inspected, he should identify those specific records so that she could determine an appropriate copying cost.

### Denial of Access Complaint:

On August 16, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to his OPRA requests

### Statement of Information:

On September 27, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA requests on March 13, and 27, 2017 respectively. The Custodian certified that she responded in writing to the Complainant’s March 10, 2017 OPRA request on multiple occasions and the Complainant inspected the responsive file on April 20, 2017. The Custodian further certified that she responded in writing to the Complainant’s March 22, 2017 OPRA request on March 30, 2017 disclosing the Application and

confirming that the GIS map submitted with the request matched the one the Township's Engineering Office had on file.

The Custodian stated that OPRA "only allows requests for records, not requests for information." MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian further contended that the OPRA response time frame did not apply where requests failed to identify specific records. N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). The Custodian contended that the evidence of record is clear that she timely responded to both OPRA requests at issue here.

The Custodian argued that the Complainant was "fully aware" of the Township's responses and pursued this action with intent to harass the Township. The Custodian thus contended that this complaint was frivolous and must be dismissed.

#### Additional Submissions:

On October 28, 2019, the Complainant e-mailed the GRC alleging several communication issues with the Township. The Complainant asserted that the Township was not assisting him to locate specific records and instead denied his OPRA requests as invalid.<sup>4</sup>

### 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>5</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 October 31, 2007).

In the matter before the Council, the Complainant contended that the Custodian failed to respond to his two (2) OPRA requests. In the SOI, the Custodian certified that she responded to the Complainant's March 10, 2017 OPRA request on multiple occasions and the Complainant conducted an inspection on April 20, 2017. The Custodian further certified that she responded to the Complainant's March 22, 2017 OPRA request on March 30, 2017 disclosing the Complainant's Application and advising that the map in his possession matched the one within the Township's

---

<sup>4</sup> The Complainant's e-mail was sent in relation to each of his ten (10) complaints being concurrently adjudicated.

<sup>5</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.

Engineering Office. The Custodian attached as part of the SOI her written responses sent to the Complainant via e-mail on those dates.

The Complainant's contention in the instant complaint is that he received no response to the subject OPRA requests. However, the Custodian provided sufficient evidence in the SOI to show that she responded in writing to the OPRA requests.<sup>6</sup> While it is unclear on which dates the responses to the March 10, 2017 OPRA request were made, the Custodian's evidence is persuasive that she reasonably refuted the Complainant's allegations. Based on this, no "deemed" denial of access occurred here.

Therefore, the Custodian has borne her burden of proof that she 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). Further, the Council need not address whether an unlawful denial of access occurred because the Custodian certified, and the record reflects, that she disclosed all records that existed. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she 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). Further, the Council need not address whether an unlawful denial of access occurred because the Custodian certified, and the record reflects, that she disclosed all records that existed. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

Prepared By: Frank F. Caruso  
Executive Director

December 8, 2020

---

<sup>6</sup> The GRC notes that the Complainant's OPRA requests nonetheless are invalid on their face because they ask questions and seek "any documents." MAG, 375 N.J. Super. at 546; Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).