



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 27, 2021 Government Records Council Meeting

Kevin O'Connor
Complainant

Complaint No. 2020-126

v.

Borough of Fort Lee (Bergen)
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 2021 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 bore her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, there was no “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

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 27th Day of July 2021

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 29, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 27, 2021 Council Meeting**

**Kevin O'Connor¹
Complainant**

GRC Complaint No. 2020-126

v.

**Borough of Fort Lee (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of “records from 2017-2020.”

Custodian of Record: Nadine Drumgoole
Request Received by Custodian: June 5, 2020
Response Made by Custodian: June 16, 2020
GRC Complaint Received: July 8, 2020

Background³

Request and Response:

On May 28, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 5, 2020, the same business day after receipt of the OPRA request, the Custodian allegedly responded telephonically leaving a voicemail for the Complainant. On June 8, 2020, the Custodian and Complainant allegedly spoke about clarifying the subject OPRA request. On the same day, the Complainant sent a letter to the Custodian clarifying the subject OPRA request to seek:

1. [A]ll records, reports, and complaints file [b]y White Manor Management against [the Complainant] with the Fort Lee Police Department [(“FLPD”)] from 300 Whiteman Street, Fort Lee, NJ and additional from Apt.’s 6, 7, 8, and other units within that complex. Specifically regarding mental health evaluations and other screenings.
2. [A]ny [FLPD] reports filed against [the Complainant] with the Fort Lee Municipal Court or the County court in Hackensack, NJ.

¹ No legal representation listed on record.

² Represented by Lesley Sotolongo, Esq., of Decotiis, FitzPatrick, Cole & Griffin, LLP (Paramus, NJ).

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

On June 16, 2020, the fifth (5th) business day after receipt of the Complainant's clarification, the Custodian responded in writing disclosing thirty-one (31) pages of reports with redactions for personal information. N.J.S.A. 47:1A-1.

Denial of Access Complaint:

On July 8, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he received "no answer" to the subject OPRA request.

Statement of Information:

On December 14, 2020, the Custodian filed a Statement of Information ("SOF"). The Custodian certified that she received the Complainant's OPRA request on June 5, 2020. The Custodian certified that left a voicemail message for the Complainant on the same day and on June 8, 2020 received a verbal agreement that he would clarify his OPRA request. The Custodian certified that she received the Complainant's clarification on June 9, 2020 and responded in writing on June 16, 2020 disclosing thirty-one (31) pages of records (with redactions for personal information).

The Custodian certified that she disclosed all records that existed. The Custodian further affirmed that the Borough of Fort Lee did not maintain any "mental health evaluations and other screenings," nor did they maintain "documents that were filed with the County Court in Hackensack, NJ." The Custodian asserted that she also advised the Complainant in writing that he could obtain court records through the New Jersey Courts online website.

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 October 31, 2007).

Moreover, if a custodian seeks clarification of an OPRA request within the statutory time frame, the response time frame stops until that time which the requestor provides said clarification.

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.

See *e.g.* Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005). Upon receipt of the requestor's clarification, the response time frame begins anew.

The sole issue raised by the Complainant in the Denial of Access Complaint is that he received "no answer" to the subject OPRA request. In the SOI, the Custodian certified that she received the subject OPRA request on June 5, 2020 and contacted the Complainant verbally to obtain clarification. The Custodian further certified that she received the Complainant's clarification on June 9, 2020 and ultimately disclosed thirty-one (31) pages of responsive records on June 16, 2020. The Custodian included in her SOI a copy of the letter sent to the Complainant and the disclosed records.

In reviewing the facts of this complaint, the GRC is satisfied that a timely response was made. Specifically, the Custodian received the subject OPRA request on June 5, 2020 and ultimately responded in writing on June 16, 2020 after receiving clarification. Even if the Custodian never sought clarification, June 16, 2020 represents the seventh (7th) business day after receipt of the original OPRA request. Further, considering that the Custodian received the Complainant's clarification on June 9, 2020, her response occurred on the fifth (5th) business day of the renewed response time frame. Thus, in either instance, the Custodian adhered to the statutory time frame in responding to the subject OPRA request.

Therefore, the Custodian bore her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kelley, GRC 2007-11; Moore, GRC 2005-80.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian bore her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

Prepared By: Frank F. Caruso
Executive Director

July 20, 2021