



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 30, 2021 Government Records Council Meeting

Charles Street
Complainant

Complaint No. 2020-31

v.

North Arlington School District (Bergen)
Custodian of Record

At the March 30, 2021 public meeting, the Government Records Council (“Council”) considered the March 23, 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 has borne her burden of proof that she timely responded to the Complainant’s OPRA request based on a warranted and substantiated extension. 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 Libertarians for Transparent Gov’t v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018). 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 30th Day of March 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: April 1, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 30, 2021 Council Meeting**

**Charles Street¹
Complainant**

GRC Complaint No. 2020-31

v.

**North Arlington School District (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. “[A]ll ledgers, receipts, depicting funds” or “monies paid” to the North Arlington School District (“District”) by the School Aged Child Care Program (“SACC”) and North Arlington Education Foundation (“NAEF”) or any of its board members for maintenance, fuel, registration, and driver use of any bus registered to the District from 2017 to present.
2. “[A]ll ledgers, receipts, depicting funds” or “monies paid” to the District by the SACC and NAEF or any of its board members for use of all buildings, repairs, and utilities to the District from 2017 to present.

Custodian of Record: Samantha Dembowski
Request Received by Custodian: December 19, 2019
Response Made by Custodian: December 30, 2019
GRC Complaint Received: February 10, 2020

Background³

Request and Response:

On December 18, 2020,⁴ the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 30, 2019, the Custodian responded in writing obtaining an extension of time to respond through January 15, 2020 due to holiday schedules and reduced staffing. On January 15, 2020, the Custodian responded in writing disclosing three (3) pages of records responsive to OPRA request item No. 1. The Custodian also denied access to OPRA request item No. 2 because no responsive records existed.

¹ No legal representation listed on record.

² Represented by Robert Lorfink, Esq., of Fogarty & Hara, Esqs. (Fair Lawn, 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.

⁴ This request was a clarification of an OPRA request submitted on December 9, 2020.

Denial of Access Complaint:

On February 10, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the extension of time obtained by the Custodian to disclose three (3) pages of records was unnecessary. The Complainant contended that had the Custodian timely responded, said response would have proven that the SACC and NAEF were delinquent in reimbursing the District. The Complainant also argued that the Custodian “created” and disclosed “fraudulent” records containing payments made after the date he submitted his OPRA request. The Complainant thus argued that the extension request was made in bad faith to “hide accounting errors.”

Statement of Information:

On February 27, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on December 19, 2019. The Custodian certified that her search included having a Business Office employee manually confirm all SACC time sheets, which were kept in hardcopy, and the District had to update its system to comply with the OPRA request. The Custodian certified that after obtaining an extension of time, she responded in writing on January 15, 2020 disclosing three (3) pages of records.

The Custodian stated that the District permits the NAEF to use its facilities to operate the SACC, which includes bussing. The Custodian averred that the NAEF reimburses the District for those transportation costs. The Custodian stated that upon receiving the Complainant’s OPRA request, she determined that additional time would be necessary due to several issues. The Custodian averred that the District was at reduced staffing levels due to the holiday break and the Business Office was performing “time-consuming end-of-the-year tasks.” The Custodian averred that she needed assistance from the District Accounts Manager, who was busy addressing (among other tasks) year-end payroll, quarterly tax reports, quarterly pension reconciliations, W-2 reconciliation and reporting, and 1095 reconciliation and reporting. The Custodian asserted that due to these issues, she sought an extension four (4) business days after receiving the OPRA request. The Custodian further argued that she responded within the extended time frame disclosing those records that existed.

The Custodian argued that no “deemed” denial of access occurred in this complaint. The Custodian contended that assuming the seventh (7th) business day was January 6, 2020, she had already responded in writing extending the response time frame to a date certain. The Custodian argued that OPRA requires a custodian to seek an extension in writing providing a specific date certain on which they would respond. N.J.S.A. 47:1A-5(i). The Custodian also argued that when addressing extension issues, the GRC must consider several factors to include extenuating circumstances affecting the agency’s ability to respond. See *e.g.* Christian v. City of Newark (Essex), GRC Complaint No. 2015-11 (January 2016). The Custodian thus argued that she unquestionably complied with OPRA by obtaining an extension to a date certain. Further, the Custodian asserted that the requested extension was reasonable given the extenuating circumstances described above. The Custodian argued that the Complainant’s OPRA request was more complex than it appeared because three (3) pages of responsive records required a labor-intensive verification process

The Custodian also argued that there was no basis for the Complainant's argument that the disclosed 2019-2020 SACC billing statement was "fraudulent." The Custodian averred that she disclosed the records as they existed on the date of her response; they reflect some payments made after the OPRA request submission date. The Custodian contended that there is no fraudulence in including this information. The Custodian contended that it appeared the Complainant was criticizing the District for disclosing the exact information sought rather than denying access on the basis that no records existed after September 2018. The Custodian argued that either way, there is no violation of OPRA for disclosing more information than the District was required to provide in response to an OPRA request.

Analysis

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 (4th) 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 (2nd) 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 (6th) 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 an extension of time until January 15, 2020 for the Complainant's OPRA request. The Custodian extended the response time on one (1) occasion for a total of seven (7) business days. 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.⁵ Id.

Regarding the subject OPRA request, the Complainant sought "all ledgers, receipts, depicting funds" of monies paid to the District by SACC and the NAEF from 2017 to the date of the OPRA request. In the SOI, the Custodian explained the District's search, which required a manual review of paper records and updating of the District's system. A potential stressor on the need for an extension was the loss of time due to holiday closures, staffing issues, and year-end District activities conducted by the Business Office. The Custodian ultimately responded on the final business day of the extension disclosing three (3) pages of responsive records.

From the Custodian's receipt of the Complainant's OPRA request, she sought an additional seven (7) business days to respond. Thus, the Custodian sought seven (7) business days in addition

⁵ "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*.

to the original seven (7) business days. In determining whether the extension was ultimately unreasonable, the GRC looks to its prior decision in Libertarians for Transparent Gov't v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018). There, the custodian sought one (1) extension comprising of twelve (12) business days to respond to the subject OPRA request. The Council ultimately found that the extension was warranted and substantiated. In reaching this conclusion, the Council noted that although the request itself was not complex, the underlying circumstances pertaining to the review of the responsive settlement agreement substantiated the extension.

The GRC sees the facts here as more permissive of an extension than in Libertarians, GRC 2016-193. Specifically, the Custodian sought less time than the custodian in Libertarians. Further, the OPRA request here was certainly more complex in that it sought certain financial data as opposed to specific documents related to a lawsuit. Further, this search coincided with several additional factors, including holidays, work schedules, the District's year-end obligations, and a manual review of paper employee time sheets for multiple years. Thus, based on the evidence of record, the GRC finds that extending the response time for the subject OPRA request to the extent demonstrated in the instant matter was not excessive.

Accordingly, the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request based on a warranted and substantiated extension. N.J.S.A. 47:1A-6; Ciccarone, GRC 2013-280. See Libertarians, GRC 2016-193. 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).

In closing, the GRC does not substantively address the Complainant's assertion that he received a "fraudulent record" containing information post-dating his OPRA request. This is because OPRA contains no provision prohibiting a custodian from disclosing records or information surpassing the date of an OPRA request, although not required to do so. See Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005). Further, the Council has no authority over the accuracy or content of responsive records. N.J.S.A. 47:1A-5(b); Cole v. Twp. of Montague (Sussex), GRC Complaint No. 2011-236 (December 2012).

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 request based on a warranted and substantiated extension. 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 Libertarians for Transparent Gov't v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018). 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

March 23, 2021