



State of New Jersey
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 29, 2022 Government Records Council Meeting

Jeffrey Voigt
Complainant

Complaint No. 2021-131

v.

Village of Ridgewood (Bergen)
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council (“Council”) considered the September 22, 2022 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 no “deemed” denial of access occurred here because the Custodian timely responded within both the statutory and renewed time frames applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 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 29th Day of September 2022

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: October 6, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2022 Council Meeting**

**Jeffrey Voigt¹
Complainant**

GRC Complaint No. 2021-131

v.

**Village of Ridgewood (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Copies of all e-mails between “Village Hall/council people and PRIDE representatives (Christian Reinhardt and Siobhan Winograd)” regarding PRIDE between May 1, 2021 and June 4, 2021.

Custodian of Record: Donna Jackson

Request Received by Custodian: June 8, 2021

Response Made by Custodian: June 15, 2021

GRC Complaint Received: June 23, 2021

Background³

Request and Response:

On June 8, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 15, 2021, the fifth (5th) business day after receipt of the subject OPRA request, the Complainant responded in writing seeking clarification of the term “Village Hall/council people.” On the same day, the Complainant responded via e-mail stating that the term meant “Council members, Village Manager.”

On June 18, 2021, the third (3rd) business day after receipt of the Complainant’s clarification, the Custodian responded in writing disclosing two (2) pages of e-mails with redactions for personal e-mail addresses, meeting access links and meeting access telephone numbers. N.J.S.A. 47:1A-1. On the same day, the Complainant responded disputing the disclosure as “woefully incomplete.” The Complainant questioned why the disclosure omitted e-mails from Mayor Susan Knudsen inclusive of discussions with Ms. Winograd, agenda discussions, promotion materials, and a list of speakers. On June 19, 2021, the Complainant forwarded the Custodian’s response to the GRC asserting that the OPRA request was “inadequately fulfilled (*i.e.*

¹ No legal representation listed on record.

² Represented by Matthew S. Rogers, Esq. of Law Office of Matthew S. Rogers, LLC (Ridgewood, 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.

missing information that exists).” The Complainant asserted that the response “either reflects incompetence or; that the Village . . . [is] hiding information.”

On June 21, 2021, the Custodian responded stating that she disclosed records including those individuals the Complainant identified in his clarified OPRA request. The Custodian offered that to the extent the Complainant believed certain e-mails were missing, he could submit a new OPRA request with a revised set of persons. On the same day, the Complainant responded arguing that the Custodian purposely misinterpreted the OPRA request for “a game of hide and seek.” The Complainant further contended that the Custodian knew that he was seeking all e-mails that “included council members and [Heather Mailander] (including others).”⁴

Denial of Access Complaint:

On June 23, 2021,⁵ the Complainant filed a Denial of Access Complaint with the Government Record Council (“GRC”). The Complainant asserted that the Custodian failed to respond to the subject OPRA request.

Statement of Information:

On July 9, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 8, 2021. The Custodian certified that on June 9, 2021, she worked with Village of Ridgewood (“Village”) Information Technology Director Dylan Hansen to perform a search for responsive records. The Custodian certified that she initially responded in writing on June 15, 2021 seeking clarification of the subject OPRA request. The Custodian affirmed she received clarification from the Complainant on the same day, and on June 17, 2021 she contacted Village Council members asking them to perform a search for responsive records. The Custodian certified that she responded on June 18, 2021 disclosing to the Complainant via e-mail two (2) pages of e-mails with minor redactions for personal information. The Custodian noted that she found additional e-mails deemed not responsive to the instant OPRA request because they did not include the individuals specified in the Complainant’s clarification.

The Custodian contended that she did not unlawfully deny access to any additional records based on the Complainant’s clarified OPRA request. The Custodian argued that the Complainant failed to reasonably clarify his OPRA request knowing that additional e-mails likely existed. The Custodian asserted that instead of further clarifying his OPRA request or submitting a new one, the Complainant instead chose to accuse her of deliberately withholding records he thought should have been disclosed.

The Custodian further argued that her actions were lawful and consistent with amendments made to OPRA on March 20, 2020 in response to the COVID-19 Public Health Emergency (“PHE”). The Custodian stated that on that day, the Legislature amended OPRA to waive the statutory response time frame during a PHE under the Emergency Health Powers Act (N.J.S.A.

⁴ Thirteen (13) minutes later, the Complainant submitted a new OPRA request. The GRC notes that said OPRA request is the subject of Voigt v. Village of Ridgewood (Bergen), GRC Complaint No. 2021-138.

⁵ The Complainant filed his verified complaint to the GRC via e-mail on June 17, 2021.

26:13-1, *et seq.* or other state of emergency under the Disaster Control Act (N.J.S.A. App. A. 9-33, *et seq.*). N.J.S.A. 47:1A-5(i)(2).⁶ The Custodian noted that the amendment nonetheless required a custodian to “make a reasonable effort” to respond during that time. The Custodian asserted that she made greater than reasonable effort

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).⁷ 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).

Further, should a requestor amend or clarify an OPRA request, it is reasonable that the time frame for a custodian to respond should begin anew; thus, providing a custodian with the statutorily mandated time frame to respond to the new or altered OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012) (holding that the custodian’s failure to respond within the new time frame following receipt of clarification resulted in a “deemed” denial of access); Gartner v. Borough of Middlesex (Middlesex), GRC Complaint No. 2014-203 (Interim Order dated February 24, 2015).

In the matter before the Council, the Complainant contended that the Custodian failed to respond to the subject OPRA request. However, the Custodian certified in the SOI that she sought clarification of the senders and/or recipients on June 15, 2022; the Complainant provided same on the same day. Notwithstanding the Complainant providing clarification, he verified the instant complaint on June 17, 2021. Nevertheless, the Custodian certified that she disclosed responsive records to the Complainant on June 18, 2021.

Thus, the issue raised by the Complainant here is whether the Custodian ultimately responded in a timely manner. Consistent with the process outlined in Carter for responding to an OPRA request after obtaining clarification, the Custodian timely responded here. That is, the Custodian sought clarification in writing on the sixth (6th) business day after receipt of the OPRA request. Further, the Custodian disclosed the records to the Complainant on the seventh (7th)

⁶ The GRC notes P.L. 2021 c.104, which was signed into law on June 4, 2021, reinstated OPRA’s normal statutory time frames established in N.J.S.A. 47:1A-5(e) and (i) notwithstanding the continuance of the PHE and except for OPRA requests seeking records directly related to a public agency’s COVID-19 response.

⁷ 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.

business day after receiving said clarification. Thus, a “deemed” denial cannot have occurred here because the Custodian properly adhered to both the statutory and clarification times frames. Further, the GRC need not reach the question of whether said response was reasonable within the confines of the PHE amendment because no *per se* timeliness violation occurred.

Accordingly, no “deemed” denial of access occurred here because the Custodian timely responded within both the statutory and renewed time frames applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter, 2011-100.

Finally, the GRC notes that it does not reach the issue of whether an unlawful denial of access occurred here because the Custodian’s response occurred after this complaint was verified on June 17, 2021. Additionally, the Complainant did not amend the instant complaint on the GRC’s Amended Denial of Access Complaint form to include the response issue. N.J.A.C. 5:105-2.3(h).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that no “deemed” denial of access occurred here because the Custodian timely responded within both the statutory and renewed time frames applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012).

Prepared By: Frank F. Caruso
Executive Director

September 22, 2022