



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 28, 2023 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2021-137

v.

Berkeley Township (Ocean)
Custodian of Record

At the March 28, 2023 public meeting, the Government Records Council (“Council”) considered the March 21, 2023 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 did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). However, the GRC declines to order any further action because the Custodian ultimately disclosed the responsive log to the Complainant on June 30, 2021.

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 28th Day of March 2023

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 3, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 28, 2023 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2021-137

v.

**Berkeley Township (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of Administrator John Camera’s e-mail account including sender name, recipient names, date, and subject line from February 1, 2021 to May 1, 2021.

Custodian of Record: Karen Stallings
Request Received by Custodian: May 5, 2021
Response Made by Custodian: May 13, 2021
GRC Complaint Received: June 30, 2021

Background³

Request and Response:

On June 4, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 15, 2021, the Custodian responded in writing stating that an extension of time through June 29, 2021 was required because the responsive logs are voluminous and additional time is needed to review them.

Denial of Access Complaint:

On June 30, 2021, 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 request within the extended time frame.

Supplemental Response:

On June 30, 2021, the Custodian responded in writing disclosing the responsive records as

¹ No legal representation listed on record.

² Represented by Robin La Bue, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.A. (Lakewood, 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.

an Excel workbook file via e-mail. The Custodian noted that she was waiting on Mr. Camera to review the logs prior to disclosing them. On the same day, Mr. Camera e-mailed the Complainant confirming that he delayed the Custodian's response due to his review.

Statement of Information:

On July 13, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on June 4, 2021. The Custodian certified that her search included Berkeley Township's ("Township") Information Technology ("IT") department, to create the responsive log. The Custodian averred that IT advised that they needed extra time to extract the log because of an e-mail server switch due to a hack in April 2021. The Custodian certified she thus responded in writing on June 15, 2021 extending the response time frame through June 29, 2021. The Custodian certified that upon receipt of the log, she reviewed it and then provided same to Mr. Camera to review. The Custodian affirmed that upon receipt of the Denial of Access Complaint on June 30, 2021, she disclosed to the Complainant via e-mail the responsive log as an Excel workbook file totaling 6,023 rows of data with her apologies for "missing the deadline."

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).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the

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.

Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a “deemed” denial of access to the records.

[Id.]

Here, the Custodian initially responded in writing to the Complainant on the seventh (7th) business day after receipt of the OPRA request obtaining an extension of time through June 29, 2021 to respond to the OPRA request. However, the Custodian did not respond prior to the expiration of the extended time frame. It was not until after the filing of this complaint on June 30, 2021 that the Custodian again responded disclosing the responsive records. Additionally, the Custodian admitted in the SOI that she did not respond prior to the expiration of the extension. Instead, she responded shortly after the filing of the complaint disclosing the responsive log. Thus, in keeping with Kohn, GRC 2007-124, the Custodian’s failure to respond prior to the extension expiration resulted in a “deemed” denial.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. See also Kohn, GRC 2007-124. However, the GRC declines to order any further action because the Custodian ultimately disclosed the responsive log to the Complainant on June 30, 2021.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). However, the GRC declines to order any further action because the Custodian ultimately disclosed the responsive log to the Complainant on June 30, 2021.

Prepared By: Frank F. Caruso
Executive Director

March 21, 2023