



**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**

**July 25, 2023 Government Records Council Meeting**

Stacey Hogan  
Complainant

Complaint No. 2021-231

v.

Township of Denville (Morris)  
Custodian of Record

At the July 25, 2023 public meeting, the Government Records Council (“Council”) considered the July 18, 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:

1. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date for when the records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). See Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011).
2. This complaint is materially defective and shall be dismissed because the requested records are not immediate access records and because the Complainant verified her complaint before the statutory time period for the Custodian to respond, as extended, had expired. See Rivera v. Borough of Rutherford Police Dep’t (Bergen), GRC Complaint No. 2011-277 (August 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 25<sup>th</sup> Day of July 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: July 27, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 25, 2023 Council Meeting**

**Stacey Hogan<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-231**

v.

**Township of Denville (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies for pick-up of “all records, files, interviews, discovery, and any other information obtained for CAD Incident P191360083, Denville Police Dept. Case #2019-13957.”

**Custodian of Record:** Tara M. Pettoni

**Request Received by Custodian:** August 20, 2021

**Responses Made by Custodian:** August 24, 2021, September 30, 2021 and October 1, 2021

**GRC Complaint Received:** September 30, 2021

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

**Request and Responses:**

On August 20, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 24, 2021, the second (2<sup>nd</sup>) business day following receipt of the request, Deputy Clerk Walsh responded in writing on behalf of the Custodian informing the Complainant that an extension of time until October 1, 2021 was required. Thereafter on September 30, 2021, the Custodian responded in writing, disclosing some of the responsive records.

**Denial of Access Complaint:**

On September 30, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that she filed her request on August 20, 2021, and the Custodian responded to the request on September 30, 2021.

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

<sup>2</sup> Represented by Sue Sharpe, Esq., of Dorsey & Semrau, LLC (Boonton, 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.

The Complainant provided a brief synopsis of the background of the criminal case for which she requested the records and stated that the case has been closed for two years. The Complainant further stated that, after taking an extension of time, the Custodian disclosed eight (8) records to her on September 30, 2021. The Complainant stated that the records disclosed were not the records she requested. The Complainant stated that she received victim statements; however, she wanted the arrestee's statements, investigation reports and records of the evidence that was collected.

The Complainant asserted that the Custodian is requiring her to retain legal counsel and pay for records that she is legally entitled to receive. The Complainant stated that at the time she submitted the OPRA request which formed the basis of the within complaint, she also submitted an OPRA request to the Morris County Prosecutor's Office ("MCPO"). The Complainant stated that the MCPO provided her with all the records within several days of her request; however, the Custodian is unlawfully denying her access to all of the records she requested.

#### Supplemental Submissions:

On September 30, 2021, the Complainant e-mailed Deputy Clerk Walsh regarding the response she received to her August 20, 2021 OPRA request. The Complainant informed Ms. Walsh that "[t]he Township of Denville DID NOT get back to me in a timely manner as it was supposed to." (Emphasis in original.) The Complainant further informed Ms. Walsh that she received victim statements; however, she wanted the arrestee's statements. The Complainant stated that she is entitled to those records and was, via the e-mail, submitting a second request for them. The Complainant stated that when she filed an OPRA request with the MCPO she "received ALL OF THE FILES I REQUESTED!!" (Emphasis in original.) The Complainant also stated that she was outraged by the Custodian's response to her request, and that she filed a Denial of Access Complaint with the GRC.

On October 1, 2021, the Custodian's Counsel e-mailed the Complainant, informing her that she attached a letter and records in response to the Complainant's September 30, 2021 OPRA request.<sup>4</sup>

#### Statement of Information:

On October 18, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on August 20, 2021. The Custodian certified that upon receipt of the Complainant's request, she realized the records were related to a highly sensitive criminal prosecution by the MCPO involving several juveniles and that she would have to coordinate extensively with the police department's records clerk, the Township's attorney and the MCPO. The Custodian certified that she knew she would need an extension of time to coordinate with the other parties and fashion a response; therefore, she

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<sup>4</sup> Although the Custodian accepted the Complainant's September 30, 2021 e-mail as an OPRA request and addressed it in the Statement of Information, the GRC notes that the Complainant did not attach the Township's official OPRA request form to the e-mail, or otherwise explicitly invoke OPRA. *Renna v. Cnty. of Union*, 407 N.J. Super. 230 (App. Div. 2009). However, notwithstanding the validity/invalidity of the September 30, 2021 "OPRA request," the GRC will not consider it because it did not form the basis of this complaint.

directed Deputy Clerk Walsh, to notify the Complainant that an extension of time would be necessary. On August 24, 2021, Ms. Walsh e-mailed a letter to the Complainant, informing her that, due to the expansiveness of the request, an extension of time until “the close of business on October 1, 2021” was required. The Custodian certified that, although Ms. Walsh asked the Complainant to contact her if she had any issue with the extension of time, the Complainant did not assert any objection.

The Custodian certified that on August 24, 2021, the police department records clerk forwarded to her some of the records responsive to the request; however, the clerk informed the Custodian that fifty-nine (59) additional records were determined to be responsive to the request. The Custodian certified that on August 27, 2021, the additional records were forwarded from the police department to the Township Clerk’s office. The Custodian certified that the records thereafter had to be reviewed by the Township’s attorney for a determination of which records could be disclosed and what redactions would be necessary. The Custodian certified that her staff also contacted the MCPO because they had assisted their police department in the underlying investigation.

The Custodian certified that, although most of the records responsive to the request were criminal investigatory records, she was making a good-faith effort to provide the Complainant with the requested records. The Custodian certified that on September 30, 2021, she disclosed responsive records to the Complainant, some of which were heavily redacted. The Custodian further certified that on that same date, the Complainant e-mailed Deputy Clerk Walsh, informing her that the Custodian failed to respond to her OPRA request in a timely manner and did not disclose records that were responsive to the request. The Custodian also certified that the Complainant stated that she filed a Denial of Access Complaint with the GRC.

The Custodian certified that on October 1, 2021, she disclosed to the Complainant additional records responsive to the request redacted in a manner consistent with what the MCPO provided.

#### Additional Submissions:

On October 11, 2021, the Complainant e-mailed the GRC. The Complainant informed the GRC that on October 1, 2021 she received all of the requested records from the Custodian, but only after she had filed a complaint on September 30, 2021. The Complainant stated that she wanted to know whether the GRC now considered the complaint closed because she had received the records, or if the GRC would hold the Custodian accountable because she had to file a complaint to obtain the balance of the records disclosed to her on October 1, 2021.

On October 18, 2021, the GRC e-mailed the Complainant confirming that she stated she had received all of the records she requested. The GRC also informed the Complainant that the matter is not closed because the Complainant alleged that the records were not disclosed in a timely manner.<sup>5</sup>

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<sup>5</sup> There were other communications between the Complainant and the GRC regarding whether she intended to withdraw the complaint by stating in an e-mail to the GRC that she was “going to pull out.” These communications need not be further addressed because they are not relevant to the adjudication of the complaint.

## Analysis

### Timeliness

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). (Emphasis added.)

In Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011), 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 for when the records would be made available, the custodian properly requested the extension. Even when a complainant does not agree to an extension of time for a response to an OPRA request, the Council has determined that the extension is nonetheless proper when the custodian seeks the extension within the initial seven (7) business day period and provides a date certain for production of the requested records. See Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010).

Here, the Complainant in her September 30, 2021 e-mail to Deputy Clerk Walsh asserted that the Custodian failed to respond to her August 20, 2021 OPRA request in a timely manner. However, the evidence of record reveals that Ms. Walsh, on behalf of the Custodian, responded in writing to the Complainant on the second (2<sup>nd</sup>) business day following receipt of the request, advising her that an extension of time until October 1, 2021 was required.

Therefore, because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date for when the records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). See Rivera, GRC Complaint No. 2009-317.

### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Council is permitted to affirm a denial of access for reasons not raised by a custodian pursuant to Paff v. Twp. of Plainsboro, Docket No. A-2122-05T2 (App. Div. 2007), *certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007).<sup>6</sup> In Paff, the complainant challenged the GRC's authority to uphold a denial of access for reasons never raised by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. The court held that:

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<sup>6</sup> On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006). [unpublished]

[t]he GRC has an independent obligation to ‘render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian’s initial determination; it is charged with determining if the initial decision was correct.

[Id.]

In Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007- 226 (April 2009), the complainant forwarded a complaint to the GRC asserting that he had not received a response from the custodian and seven (7) business days would have passed by the time the GRC received the complaint. The Council held that because the complainant’s cause of action was not ripe at the time he verified the complaint, the complaint was materially defective and therefore had to be dismissed.

In Rivera v. Borough of Rutherford Police Dep’t (Bergen), GRC Complaint No. 2011-277 (August 2012), the complainant requested twelve separate items. Over the course of a two-month period, the custodian took five extensions of time without objection from the complainant. For each extension, the custodian provided a date certain by which she would next respond to the complainant. During this period, the custodian addressed all but five request items and disclosed some of the records in redacted form. Four (4) business days prior to the end of the custodian’s last extension, the complainant informed her that he filed a Denial of Access Complaint as his objection to the extensions of time. The Council subsequently determined that the extensions were properly taken, and because the complainant filed the complaint before the time for the custodian to respond had expired, the complaint was materially defective and had to be dismissed.

The facts in the instant complaint are very similar to those in Rivera, GRC 2011-277. Here, Deputy Clerk Walsh, on behalf of the Custodian, notified the Complainant on the second (2<sup>nd</sup>) business day following receipt of the request that an extension of time would be required until “the close of business on October 1, 2021.” As in Rivera, during the extended time period, some of the requested records were disclosed. The Complainant did not raise an objection to the extension until September 30, 2021, at which time she emphatically stated that the Custodian failed to respond to her request in a timely manner. And in the same correspondence, the Complainant stated that she filed a Denial of Access Complaint with the GRC. The evidence of record reveals that the Complainant verified the complaint on September 30, 2021, which was prior to the extended deadline date.

Accordingly, this complaint is materially defective and shall be dismissed because the requested records are not immediate access records and because the Complainant verified her complaint before the statutory time period for the Custodian to respond, as extended, had expired. See Rivera, GRC 2011-277.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date for when the records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). See Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011).
2. This complaint is materially defective and shall be dismissed because the requested records are not immediate access records and because the Complainant verified her complaint before the statutory time period for the Custodian to respond, as extended, had expired. See Rivera v. Borough of Rutherford Police Dep't (Bergen), GRC Complaint No. 2011-277 (August 2012).

Prepared By: John E. Stewart

July 18, 2023