



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

JACQUELYN A. SUÁREZ  
*Acting Commissioner*

### FINAL DECISION

#### March 26, 2024 Government Records Council Meeting

Tucker M. Kelley  
Complainant

v.

Rockaway Township (Morris)  
Custodian of Record

Complaint No. 2021-311

At the March 26, 2024 public meeting, the Government Records Council (“Council”) considered the March 19, 2024 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 26<sup>th</sup> Day of March 2024

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, 2024**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 26, 2024 Council Meeting**

**Tucker M. Kelley<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-311**

v.

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

**Records Relevant to Complaint:** Electronic copies via e-mail of: “all job postings/employment opportunities and published public notices for the Superintendent of Water and Sewer position . . . successful applicant’s resume, application, acceptance letter, salary, and any/all qualifications for the Superintendent of Water and Sewer position.”

**Custodian of Record:** Christina Clipperton

**Request Received by Custodian:** November 10, 2021

**Response Made by Custodian:** November 22, 2021

**GRC Complaint Received:** November 24, 2021

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

**Request:**

On November 10, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 22, 2021, the seventh (7<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing stating that an extension until December 6, 2021 was necessary to respond to the Complainant’s OPRA request. The Custodian stated that additional time was needed to locate, review, and redact the potentially responsive records.

On November 23, 2021, the Complainant responded to the Custodian stating that no redactions should be needed for a public notice, and that the allotted seven (7) business days was more than enough to locate review and redact a resume. The Complainant further stated that the public notice and resume pertained to Ryan Furrey. The Custodian stated that he did not consent to an additional fourteen (14) calendar days to produce responsive records.

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

<sup>2</sup> Represented by Jonathan N. Frodella, Esq., of Laddey, Clark & Ryan, LLP (Sparta, 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.

### Denial of Access Complaint:

On November 24, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant referred to the e-mail correspondence between himself and the Custodian on November 22 and 23, 2021 with regard to his claims of an unlawful denial of access.

### Response:

On November 24, 2021<sup>4</sup>, the Custodian responded in writing providing responsive records along with a redaction index. The Custodian also stated that the portion seeking “any/all qualifications” failed to identify specific records, and therefore any responsive information would be contained within the provided resumes and applications.

The Custodian also noted that the original request did not include a timeline, which led to the Township’s need for an extension. The Custodian stated that because of the clarification provided on November 23, 2021, the Township was able to locate and provide the records and included records relating to the position’s previous employee.

### Statement of Information:

On December 9, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 10, 2021. The Custodian certified that the Township Administrator searched through the Township’s files to locate responsive records. The Custodian certified that she responded in writing on November 24, 2021, providing responsive records, with redactions made to some.

The Custodian asserted that an extension of time was needed to locate, review, and potentially redact responsive records, and said extension was made on the seventh (7<sup>th</sup>) business day. The Custodian asserted that when the Complainant provided a clarification on November 23, 2021, she was able to provide responsive records on November 24, 2021. The Custodian thus asserted that the matter was moot, and the complaint should be dismissed.

## 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).

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<sup>4</sup> The GRC notes that the complaint was received at approximately 9:24AM, and response was received at approximately 4:52PM. The GRC further notes that the Complainant did not raise any issues regarding the Custodian’s response, including the redactions made to the responsive records.

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 (4<sup>th</sup>) 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. N.J. 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 (2<sup>nd</sup>) 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 (6<sup>th</sup>) 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 December 6, 2021 for the Complainant's OPRA request. The Custodian extended the response time on one (1) occasion for a total of nine (9) business days. As noted above, a requestor's approval is not required for a valid extension. However, it should be noted that the Complainant objected to the extension prior to the filing of 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.<sup>5</sup> Id.

Regarding the subject OPRA request, the Complainant sought "all job postings/employment opportunities and published public notices for the Superintendent of Water and Sewer position . . . successful applicant's resume, application, acceptance letter, salary, and any/all qualifications for the Superintendent of Water and Sewer position." The Custodian ultimately responded on the second (2<sup>nd</sup>) business day of the extension providing responsive records with redactions.

From the Custodian's receipt of the Complainant's OPRA request, she sought an additional nine (9) business days to respond. Thus, the Custodian sought nine (9) business days in addition to the original seven (7) business days but responded on the second (2<sup>nd</sup>) business day into the extension. Thus, the total time expended to respond to the subject OPRA request totaled nine (9) 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 less specific than the request in Libertarians, as no date range was provided for the request. Upon receiving clarification from the Complainant, the Custodian was able to provide a response the next day. 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-

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<sup>5</sup> "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*.

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).

### **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: Samuel A. Rosado  
Staff Attorney

March 19, 2024