



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2023 Government Records Council Meeting

Mustafa Rabboh
Complainant

Complaint No. 2021-315

v.

Newark Police Department (Essex)
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 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. The Custodian did not bear his burden of proof that he 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 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).
2. The Custodian lawfully denied access to the responsive domestic violence records because same are exempt under the Prevention of Domestic Violence Act. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014).

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 31st Day of January 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: February 6, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2023 Council Meeting**

**Mustafa Rabboh¹
Complainant**

GRC Complaint No. 2021-315

v.

**Newark Police Department (Essex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of any and all police reports from October 1, 2021 through November 11, 2021 “listing the name Rabboh.”

Custodian of Record: Kenneth Louis

Request Received by Custodian: November 12, 2021

Response Made by Custodian: December 4, 2021

GRC Complaint Received: November 30, 2021

Background³

Request:

On November 11, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 24, 2021, the Complainant e-mailed the Custodian stating that he had not received a response and asked for a status update on his OPRA request.

Denial of Access Complaint:

On November 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 statutory time frame. The Complainant requested that the GRC require Newark Police Department (“NPD”) to comply with his OPRA request.

Response:

On December 7, 2021, Detective Nicole Goodwin sent a memorandum to Supervisor Ana

¹ No legal representation listed on record.

² Represented by Samora F. Noguera, Esq. (Newark, 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.

Golinski advising that responsive records are exempt from disclosure under the Prevention of Domestic Violence Act (“PDVA”). N.J.S.A. 2C:17-35. Detective Goodwin noted that records may only be disclosed in response to a Court Order.

Statement of Information:

On December 17, 2021, Deputy City Clerk Kathleen Marchetti filed a Statement of Information (“SOI”) on behalf of the Custodian.⁴ Ms. Marchetti certified that the City of Newark (“City”) received the Complainant’s OPRA request on November 12, 2021. Ms. Marchetti affirmed that Detective Goodwin conducted a search of NPD’s system and located records created under the PDVA. The Custodian certified that Detective Goodwin advised Ms. Golinski of this fact on December 7, 2021, and that response is being provided to the Complainant through the SOI.

Ms. Marchetti argued that no unlawful denial of access occurred because the responsive records were not disclosable under the PDVA. N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-24(a). Ms. Marchetti noted that similar exemptions to domestic violence exist elsewhere and is supported by relevant case law. New Jersey Court Rules, R. 1:38-3(d); Brennan v. Bergen Cnty. Prosecutor’s Office, 233 N.J. 330 (2018). Ms. Marchetti affirmed that the Complainant was a suspect in the domestic violence incident that resulted in the responsive records.

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).⁵ 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).

Here, the Complainant submitted his complaint after not receiving a response to the subject OPRA request. The evidence of record provides that no response was provided to the Complainant until the City attached Detective Goodwin’s memorandum to the SOI. That delay is calculated as twenty-three (23) business days following the date the City certified receiving the OPRA request. Thus, the evidence of record clearly supports that a “deemed” denial of access occurred here.

⁴ Custodian’s Counsel advised the GRC that the Custodian was unavailable on medical leave.

⁵ 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.

Therefore, the Custodian did not bear his burden of proof that he 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 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, GRC 2007-11.

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.

OPRA provides that:

The provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; *regulation promulgated under the authority of any statute or Executive Order of the Governor*; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added)].

Further, the PDVA provides that "[a]ll records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law." N.J.S.A. 2C:25-33.

Previously, in VanBree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014), the Council was tasked with determining whether the custodian lawfully denied access to certain records under the PDVA. In concluding that the custodian lawfully denied access to same, the Council confirmed that the records definitively related to a domestic violence incident and noted that the PDVA included a confidentiality clause. Id. at 5.

In the matter currently before the Council, the Complainant filed this complaint, arguing that the Custodian failed to respond to his OPRA request. In the SOI, Ms. Marchetti certified that Detective Goodwin searched the NPD's system and located records wherein the Complainant was a suspect in a domestic violence incident. The Custodian argued that said records were not disclosable based on the PDVA and noted that court rules and relevant case law supported this denial.

Notwithstanding the presence of a "deemed" denial of access, the GRC is persuaded that a lawful denial of access occurred here. Specifically, VanBree is clear that domestic violence records are not disclosable under OPRA, which is tacitly supported by the Brennan Court's *dicta* statement

that “the home address of a victim of domestic violence cannot be obtained through OPRA.” *Id.* at 338.⁶ Ultimately, records related to domestic violence on not disclosable under N.J.S.A. 47:1A-9 and N.J.S.A. 2C:25-33. Thus, no unlawful denial of access occurred here.

Accordingly, the Custodian lawfully denied access to the responsive domestic violence records because same are exempt under the PDVA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree, GRC 2014-122.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he 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 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).
2. The Custodian lawfully denied access to the responsive domestic violence records because same are exempt under the Prevention of Domestic Violence Act. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014).

Prepared By: Frank F. Caruso
Executive Director

January 24, 2023

⁶ The GRC notes that the Brennan Court’s focus was on the privacy interest attached to successful action bidders in a public auction. Thus, the Court did not address any other types of records associated with a domestic violence incident beyond address information.