



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

Anonymous
Complainant

Complaint No. 2021-342

v.

Borough of Haledon (Passaic)
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 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). However, the GRC declines to order any further action because the Custodian disclosed all available responsive records to the Complainant via e-mail on December 15, 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 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

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Anonymous¹
Complainant**

GRC Complaint No. 2021-342

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of thirty-nine (39) computer-aided dispatch (“CAD”) reports, twenty-four (24) summonses associated with those CAD reports, and one (1) arrest report.

Custodian of Record: Allan Susen
Request Received by Custodian: August 2, 2021
Response Made by Custodian: December 15, 2021
GRC Complaint Received: December 16, 2021

Background³

Request and Response:

On August 1, 2021, a Sunday, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 15, 2021, the 92nd business day after receipt of the OPRA request, the Custodian responded in writing disclosing all CAD reports, fifteen (15) summonses, and the arrest report. The Custodian included a memo from the Haledon Police Department stating that summonses for eleven (11) of the CAD reports were not provided because either no summons existed or only verbal warnings were given.

Denial of Access Complaint:

On December 16, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).⁴ The Complainant asserted that the Custodian failed to respond to the subject OPRA request.

¹ No legal representation listed on record.

² Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, 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.

⁴ The Complainant verified and e-mailed his complaint to the GRC on December 15, 2021.

Statement of Information:

On December 27, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 2, 2021. The Custodian averred that the OPRA request was never entered into the Borough of Haledon’s (“Borough”) OPRA processing system and thus he did not respond to it. The Custodian certified that he was unaware that the OPRA request was not processed until receiving the Denial of Access Complaint on December 15, 2021. The Custodian affirmed that he immediately processed the OPRA request and responded on the same day disclosing the responsive records. The Custodian asserted that there was no purposeful intent to deny 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 the subject OPRA request on August 1, 2021, a Sunday. The Complainant subsequently e-mailed his complaint to the GRC on December 15, 2021, copying the Custodian, alleging that he received no response. In the SOI, the Custodian certified that he received the subject OPRA request on August 2, 2021 but it was not entered into the Borough’s OPRA system. The Custodian affirmed that he never realized the error until receiving the complaint. The Custodian certified that he immediately processed the OPRA request and responded on the same day, over four (4) months after receipt, disclosing all responsive records that existed. The evidence of record here clearly indicates that a “deemed” denial of access occurred.

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. However, the GRC declines to order any further action because the Custodian disclosed all available responsive records to the Complainant via e-mail on December 15, 2021.

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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that 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). However, the GRC declines to order any further action because the Custodian disclosed all available responsive records to the Complainant via e-mail on December 15, 2021.

Prepared By: Frank F. Caruso
Executive Director

January 24, 2023