



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 28, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2021-345

v.

Borough of Haledon (Passaic)
Custodian of Record

At the February 28, 2023 public meeting, the Government Records Council (“Council”) considered the February 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 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 Council should decline to order any further action because the Custodian disclosed all responsive records to the Complainant via e-mail on December 16, 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 February 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: March 6, 2023

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Anonymous¹
Complainant**

GRC Complaint No. 2021-345

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of thirty-eight (38) computer-aided dispatch (“CAD”) reports, thirty-three (33) summonses associated with those CAD reports, and four (4) arrest report.

Custodian of Record: Allan Susen
Request Received by Custodian: July 28, 2021
Response Made by Custodian: August 6, 2021
GRC Complaint Received: December 16, 2021

Background³

Request and Response:

On July 28, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 6, 2021, the seventh (7th) business day after receipt of the subject OPRA request, the Custodian responded in writing extending the response time frame through August 17, 2021 to locate responsive records. On August 17, 2021, the Custodian responded in writing extending the response time through August 26, 2021 to locate responsive records. On August 26, 2021, the Custodian responded in writing extending the response time frame through September 6, 2021 to locate responsive records. On September 3, 2021, the Custodian responded in writing extending the response time frame through September 14, 2021 to locate responsive records. On September 14, 2021, the Custodian responded in writing extending the response time frame through September 23, 2021 to locate responsive records. On September 23, 2021, the Custodian responded in writing extending the response time frame through October 4, 2021 to locate responsive records. On October 4, 2021, the Custodian responded in writing extending the response time frame through October 13, 2021 to locate responsive records. On October 5, 2021, the Custodian responded in writing disclosing all records.

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.

Denial of Access Complaint:

On December 16, 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 the subject OPRA request.

Supplemental Response:

On December 16, 2021, the Custodian forwarded his October 5, 2021 response to the Complainant. The Custodian noted that the e-mail entered into the original response was “incorrect[]” but was fixed.

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 July 28, 2021. The Custodian affirmed that he forwarded the OPRA request to Borough of Haledon (“Borough”) Police Department. The Custodian certified that he sought multiple extensions to address the subject OPRA request. The Custodian certified that he ultimately responded in writing on October 5, 2021 disclosing the responsive records to the Complainant.

The Custodian stated that upon receipt of this complaint on December 16, 2021, he reviewed the multiple responses and found that the Complainant’s e-mail address was incorrectly entered into the Borough’s OPRA processing system. The Custodian averred that he immediately corrected the address and resent the responsive records to the Complainant.

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).

Here, the Complainant contended that the Custodian failed to respond to his OPRA request. In the SOI, the Custodian certified that after several extensions, he disclosed the responsive records to the Complainant via e-mail on October 5, 2021. However, the Custodian stated that upon receipt

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.

of the complaint, he found that the e-mail address entered in the Borough's OPRA processing system was incorrect. The Custodian averred that upon discovery of this error, he corrected the system and resent the responsive records to the Complainant on December 16, 2021.

A review of the subject OPRA request, the Custodian's responses, and Denial of Access Complaint supports that the response e-mails contained an incorrect e-mail address. Specifically, the inputted e-mail address was missing the first three characters. The Custodian has also confirmed the presence of this error in the SOI. Thus, although the Complainant sent his OPRA request through a valid e-mail address, the Custodian's error resulted in multiple delivery failures that went undetected until the filing of this complaint. It is this typo that ultimately results in a "deemed" denial of access. See also Owoh, Esq. (O.B.O. AADARI) v. City of Asbury Park (Monmouth), GRC Complaint No. 2018-211 (August 2020).

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 Council should decline to order any further action because the Custodian disclosed all responsive records to the Complainant via e-mail on December 16, 2021.

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 Council should decline to order any further action because the Custodian disclosed all responsive records to the Complainant via e-mail on December 16, 2021.

Prepared By: Frank F. Caruso
Executive Director

February 21, 2023