



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

August 30, 2022 Government Records Council Meeting

Jeffrey Voigt
Complainant

Complaint No. 2021-76

v.

Village of Ridgewood (Bergen)
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council (“Council”) considered the August 23, 2022 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 this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the self-imposed statutory time period for the Custodian to respond, *as extended*, had expired. See Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009). See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

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 30th Day of August 2022

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: September 1, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 30, 2022 Council Meeting**

**Jeffrey Voigt¹
Complainant**

GRC Complaint No. 2021-76

v.

**Village of Ridgewood (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Copies of Custodian Counsel's invoices "related to non-profit work" for July 2020 through October 2020.

Custodian of Record: Donna Jackson

Request Received by Custodian: March 29, 2021

Response Made by Custodian: April 8, 2021

GRC Complaint Received: April 12, 2021

Background³

Request and Response:

On March 16, 2021, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On March 26, 2021, the Complainant e-mailed the Custodian seeking a status update as he believed the OPRA request was "now [eight (8)] business days old." On March 29, 2021, the Custodian e-mailed the Complainant stating that she could not locate the OPRA request "in [her] records" and sought confirmation as to the date same was submitted. The Complainant responded confirming that he believed he submitted it on March 16, 2021, but that he would provide an additional seven (7) business days to respond to same. The Custodian responded confirming receipt of the OPRA request and advising that she would respond within the seven (7) business days.

On April 8, 2021, the seventh (7th) business day after receipt of the OPRA request, the Custodian responded in writing stating that an extension of time to respond until April 9, 2021 is necessary. On the same day, the Complainant e-mailed the Custodian asserting that, by his calculation, that day was already "day [eight (8)]" and "[t]omorrow is day [nine (9)]." On April 9, 2021, the Custodian responded advising that she received the subject OPRA request on March 29,

¹ No legal representation listed on record.

² Represented by Matthew S. Rogers, Esq. of Law Office of Matthew S. Rogers, LLC (Ridgewood, 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.

2021 and the Village of Ridgewood (“Village”) was closed on April 2, 2021.⁴ The Custodian thus stated that April 8, 2021 was the seventh (7th) business day and she obtained an extension through April 9, 2021. Later on April 9, 2021, the Custodian responded disclosing to the Complainant a two (2) pages of records responsive to the subject OPRA request with a redaction for attorney-client privileged information. N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On April 12, 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 within the statutory time frame.

Statement of Information:

On April 29, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 29, 2021. The Custodian certified that her search included contacting Custodian’s Counsel to search for responsive records. The Custodian certified that she responded in writing on April 8, 2021 obtaining an extension of time to respond through April 9, 2021. The Custodian certified that she subsequently disclosed the responsive records to the Complainant on April 9, 2021.

The Custodian contended that no violation of OPRA occurred because she timely sought an extension of time and subsequently responded within that extension disclosing the responsive records. The Custodian also argued that her actions were lawful and consistent with amendments made to OPRA on March 20, 2020 in response to the COVID-19 Public Health Emergency (“PHE”). The Custodian stated that on that day, the Legislature amended OPRA to waive the statutory response time frame during a PHE under the Emergency Health Powers Act (N.J.S.A. 26:13-1, et seq.) or other state of emergency under the Disaster Control Act (N.J.S.A. App. A. 9-33, et seq.). N.J.S.A. 47:1A-5(i)(2). The Custodian noted that the amendment nonetheless required a custodian to “make a reasonable effort” to respond during that time. The Custodian asserted that reasonable efforts include extensions of time, which she utilized here to ensure compliance with the subject OPRA requests. The Custodian thus argued that she conformed to the intent of OPRA as amended.

Analysis

Unripe Cause of Action

The Council is permitted to raise additional defenses regarding the disclosure of records 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).⁵ In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted

⁴ That day was a State holiday observing Easter.

⁵ On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

portions to the requested executive session minutes. The Council affirmed the custodian's denial to portions of the executive session minutes but for reasons other than those cited 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:

[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.]

The court further stated that:

[a]side from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. Of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), aff'd, 24 N.J. 139 (1957).

[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 by the time the GRC received his complaint seven (7) business days would have passed. The Council held that ". . . the Complainant's cause of action was not ripe at the time he verified his Denial of Access Complaint." The Council reasoned that because the complainant filed the complaint before the statutorily mandated seven (7) business day period had expired, the custodian had not yet denied the complainant access to a government record. As such, the Council dismissed the complaint.

Here, the Complainant submitted the subject OPRA request on March 16, 2021, which sought "immediate access" records. However, the Custodian confirmed on March 29, 2021 that she did not receive the subject OPRA request until that date. Also, the Complainant confirmed this fact via e-mail and noted that he would provide the Complainant a *de facto* extension of seven (7) business days to respond to it. Thus, by the GRC's calculation, the statutory time frame expired on April 8, 2021 when not including April 2, 2021, which was a holiday. It was on April 8, 2021 that the Custodian extended the time frame to April 9, 2021 and subsequently disclosed the responsive records on that day. Notwithstanding, the Complainant verified this complaint on April

8, 2021, prior to the Custodian's request for an extension. In his subsequent e-mail to the Custodian on April 8, 2021, the Complainant averred that he believed April 8, 2021 was ""day [eight (8)]."

N.J.S.A. 47:1A-6 provides that "[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian's decision by filing . . . a complaint with the Government Records Council . . ." For such a complaint to be ripe, however, the complainant must have been denied access to a government record. In the instant complaint, however, the Complainant verified his complaint on April 8, 2021, which was within the self-imposed statutory time period, and therefore before the Custodian had a chance to respond. The Complainant here acted in a similar manner as the complainants in Sallie, GRC 2007-226, by filing a Denial of Access Complaint with the GRC prior to expiration of the valid time period for the Custodian to respond, and as such, before she fulfilled the request by granting or denying access to records. As such, the GRC finds *sua sponte* that the complaint was filed prematurely and is therefore unripe for adjudication.

Accordingly, this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the self-imposed statutory time period for the Custodian to respond, *as extended*, had expired. See Sallie, GRC 2007-226. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the self-imposed statutory time period for the Custodian to respond, *as extended*, had expired. See Sallie v. N.J. Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009). See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

Prepared By: Frank F. Caruso
Executive Director

August 23, 2022