



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 30, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2022-179

v.

Borough of Haledon (Passaic)
Custodian of Record

At the May 30, 2023 public meeting, the Government Records Council (“Council”) considered the May 23, 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 May 9, 12, and 17, 2022.

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 May 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: June 6, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 30, 2023 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2022-179

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of forty-one (41) computer-aided dispatch (“CAD”) reports, thirty-seven (37) summonses associated with those CAD reports, and one (1) arrest report.

Custodian of Record: Allan Susen³

Request Received by Custodian: July 24, 2021

Response Made by Custodian: May 12, 2022

GRC Complaint Received: May 9, 2022

Background⁴

Request:

On July 24, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On May 9, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted the Custodian failed to respond to his OPRA request.

Response:

On May 9, 2022, nearly ten (10) months after receipt of the OPRA request, the Custodian

¹ No legal representation listed on record.

² Represented by Joseph M. Wenzel, Esq., of Friend & Wenzel, LLC. (Clifton, NJ). Previously represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

³ The Custodian retired on January 1, 2023. Deputy Clerk Joanne Van Hook briefly served as “custodian of record” until Mr. Mounir Almaita was hired to serve as the Borough’s Municipal Clerk.

⁴ 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.

responded in writing disclosing multiple records. On May 10, 2022, the Complainant replied stating that one (1) CAD report and three (3) summonses were “missing.” On May 17, 2022, the Custodian again responded disclosing additional records and advising the Complainant via letter from Records Clerk Nicholas Freitas that sixteen (16) summonses either did not exist or could not be located.

Statement of Information:

On May 18, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 24, 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 May 9, 2022. The Custodian affirmed that he immediately processed the OPRA request and responded on May 12, 2022 disclosing responsive records. The Custodian affirmed that he disclosed additional records on May 17, 2022 after being advised by the Complainant that a few were deemed “missing.” The Custodian further noted that sixteen (16) of the summonses relating to corresponding CAD reports requested did not exist because either verbal warnings were given or no summonses were located. 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 July 24, 2021. The Complainant subsequently e-mailed his complaint to the GRC on May 9, 2022, copying the Custodian, alleging that he received no response. In the SOI, the Custodian certified that he received the subject OPRA request on July 24, 2021 but it was not entered into the Borough’s OPRA system. The Custodian certified that he immediately processed the OPRA request and responded on May 9, 12, and 17, 2022, nearly ten (10) months after receipt, disclosing all responsive records that existed. The evidence of record here clearly indicates that a “deemed” denial of access occurred.

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. However, the GRC declines to order any further action because the Custodian disclosed all available responsive records to the Complainant via e-mail on May 9, 12, and 17, 2022.

In closing, the GRC recognizes that a failure to respond to an OPRA request for multiple months is particularly egregious. However, the GRC finds that the facts here do not warrant a further review for a potential knowing and willful violation. Specifically, the Complainant filed this complaint, which alerted the Custodian to the existence of the request, ten (10) months after submission of the OPRA request.⁶ While custodians have an affirmative obligation to set forth processes to ensure all submitted OPRA requests are properly addressed, such processes may not be infallible. The Custodian's actions upon receipt of the instant Denial of Access Complaint strongly indicate that the Complainant's filing, and not a knowing and willful attempt by the Custodian to subvert OPRA's statutory requirements, dictated the excessive response period

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 May 9, 12, and 17, 2022.

Prepared By: Frank F. Caruso
Executive Director

May 23, 2023

⁶ This complaint was filed prior to the GRC's November 7, 2022 readoption of its regulations with amendments, which included a sixty (60) calendar statute of limitation. N.J.A.C. 5:105-2.1(a).