



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

April 29, 2025 Government Records Council Meeting

Danyale Robinson
Complainant

GRC Complaint No. 2022-238

v.

Township of Franklin (Somerset)
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 2025 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 her burden of proof that she 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. Notwithstanding the “deemed” denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s May 3, 2022 OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. Notwithstanding the “deemed” denial of access, the Custodian did not unlawfully deny access to the May 25, 2022 OPRA request “CCBC, change of use applications, and all other records available for public consumption.” N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects that the Township of Franklin provided all responsive records. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

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 29th Day of April 2025

John A. Alexy, 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: May 5, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**Danyale Robinson¹
Complainant**

GRC Complaint No. 2022-238

v.

**Township of Franklin (Somerset)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via email of:

May 3, 2022 OPRA request: “Looking to obtain information pertaining to defunct business Bonkerz formerly located in Unit 1A, 4437 Route 27 (Kingston Mall/Princeton Marketplace). Specifically, from the years of 2013 – 2018 with a focus on use variances and resolutions obtained for the specified location.”

May 25, 2022 OPRA request: “Looking to obtain information pertaining to defunct business Bonkerz formerly located in Unit 1A, 4437 Route 27 (Kingston Mall/Princeton Marketplace). Years 2013 – 2018. Would like CCBC, change of USE applications, and all other records available for public consumption.”

Custodian of Record: Ann Marie McCarthy

Request Received by Custodian: May 3, 2022 and May 25, 2022

Response Made by Custodian: June 13, 2022

GRC Complaint Received: June 2, 2022

Background³

Request:

On May 3, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 16, 2022, and May 20, 2022, the Complainant sent follow-up e-mails to the Custodian inquiring about the status of her OPRA request.

¹ No legal representation listed on record.

² Represented by Harlynn A. Lack, Esq. of Rainone Coughlin Minchello (Iselin, 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.

On May 25, 2022, after not receiving any response from the Custodian, the Complainant submitted a second (2nd) OPRA request revising the specific records sought as outlined above and requested to be informed in writing if no responsive records exist.

Denial of Access Complaint:

On June 2, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted she never received any response to either the May 3, 2022 OPRA request or her follow up OPRA request on May 25, 2022. The Complainant noted that she sent follow-up e-mails to the Township on May 16 and May 20, 2022, inquiring about the status of the May 3, 2022 OPRA request. The Complainant stated that, after receiving no response, the Complainant filed her second (2nd) OPRA request on May 25, 2022 revising the specific records requested in an effort to expedite the Township of Franklin’s (“Township”) response.

The Complainant contended that the Township was purposely stonewalling her from obtaining information that can help her make an informed decision on sourcing a new location/space for her business. The Complainant noted she also filed a complaint with the “Department of Regulatory Affairs” against Township official(s) that have “close affiliation with the departments in which are required to provide me this information.”

Response:

On June 13, 2022, the twenty-eighth (28th) and twelfth (12th) business days after receipt of each OPRA request, the Custodian responded in writing apologizing for the lack of response due to “confusion amongst staff members.” The Custodian stated that no records responsive to the May 3, 2022 OPRA requests existed. The Custodian further stated that she located and was disclosing seven (7) records responsive to the May 25, 2022 OPRA request.

Statement of Information:

On June 20, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s first OPRA request on May 3, 2022. The Custodian certified that her search included first sending the request to the Zoning and Construction Departments who subsequently informed her there were no responsive records to the request. The Custodian certified that she received the Complainant’s second OPRA request on May 25, 2022. The Custodian certified that upon learning no response was made to the May 3 OPRA request, she provided clarification and re-sent the request to the appropriate departments of Zoning, Planning, and Construction, which yielded responsive records.

The Custodian stated that after receiving the May 3 OPRA request, Christine Woodbury the Zoning and Planning Secretary e-mailed the Custodian and Msiba Holliman, Deputy Clerk on May 9, 2022, stating she spoke with the Complainant directly to make sure she understood “use variance” correctly as mentioned in her OPRA request. The Custodian maintained that “through that conversation, it was not a request that Planning and Zoning had any documentation to provide

her.” The Custodian stated that following Ms. Woodbury’s e-mail, Ms. Holliman believed the May 3 OPRA request was addressed and was subsequently closed.

The Custodian certified that she forwarded the Complainant’s May 16 and May 20, 2022 follow-up e-mails to Ms. Holliman and Administrative Aide Nancy Zumbana because the Custodian was out of state attending a funeral. The Custodian certified that she was under the impression responses to these e-mails were sent in her absence. The Custodian certified she received the Complainant’s second OPRA request on May 25, 2022, but did not respond because she was out of the office for the next week and a half on vacation. Nevertheless, the Custodian stated that on June 1, 2022, Ms. Zumbana sent an e-mail to Irene Epshinsky, Permit Expediter; Cereza Roundtree, Zoning Officer; and Ms. Woodbury indicating the deadline to respond to the May 25 OPRA request was June 6, 2022. The Custodian stated that, on or about June 6, 2022, Ms. Roundtree sent a copy of a Zoning Permit dated July 10, 2013, to Ms. Zumbana, but the permit was never disclosed to the Complainant. The Custodian certified that she received the instant Denial of Access Complaint on June 6, 2022, at which point she realized there had never been a response made to the OPRA request. The Custodian certified she immediately re-sent the OPRA requests to the appropriate departments asking for responsive records.

The Custodian certified that she responded to the Complainant in writing for the first time on June 13, 2022. The Custodian explained the confusion amongst staff members regarding both OPRA requests and that she redirected the requests to the proper departments ultimately yielding responsive records. The Custodian certified there are no responsive records to the May 3, 2022 OPRA request as per the Secretary of the Planning Board and Zoning Board of Adjustment. The Custodian certified that in response to the May 25, 2022 OPRA request, several responsive records were located including certificates of occupancy, certificates of approval, zoning permits, zoning applications, and an amusement games license file. The Custodian certified that she provided the Complainant with sixty-one (61) pages of responsive records on June 13, 2022.

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).

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.

Here, the Complainant submitted her OPRA requests on May 3, 2022, and May 25, 2022, and subsequently filed the instant complaint on June 2, 2022, asserting the Custodian failed to respond to both as of that date. In the SOI, the Custodian certified she received the subject OPRA requests on May 3 and May 25, 2022, but did not respond in writing until June 13, 2022, when she realized no response had been made. Thus, the evidence clearly supports a “deemed” denial of access occurred.

Therefore, the Custodian did not bear her burden of proof that she 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.

May 3, 2022 OPRA Request

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant’s May 3 OPRA request sought “information regarding defunct business Bonkerz. . . from the years of 2013 – 2018 with a focus on use variances and resolutions obtained for the specified location.” The Custodian responded to and certified in the SOI that there are no records responsive to this request. The Custodian explained the initial confusion during the search and response regarding this request but detailed that ultimately the Zoning and Planning Secretary Ms. Woodbury informed the Custodian via e-mail on May 9, 2022, that Planning and Zoning did not have any responsive records for this OPRA request.

Upon review, the GRC is persuaded that no unlawful denial of access has occurred. The evidence of record supports the Custodian’s position that no responsive records to the May 3, 2022 OPRA request exist. That is, the Custodian certified that the Secretary of Zoning and Planning informed her that no records responsive to the May 3, 2022 OPRA request exist. The Complainant has not provided any competent, credible evidence necessary to refute the Custodian’s certification in the SOI. Based on the foregoing, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, notwithstanding the “deemed” denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s May 3, 2022 OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

May 25, 2022 OPRA Request

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Here, the Complainant's May 25, 2022 OPRA request differed from the May 3 request because it specifically sought "CCBC, change of USE applications, and all other records available for public consumption." The Custodian certified that she realized this request had not been responded to on June 6, 2022, at which point she re-sent the request to the Zoning, Planning, and Construction departments to search for responsive records. The Custodian certified that on June 13, 2022, she e-mailed the Complainant providing copies of responsive records from the Zoning Officer, Construction Office, and Clerk's Office totaling sixty-one (61) pages. The Custodian certified that the records provided were the only records the Township had in response to the instant OPRA request. Further, the Complainant failed to present any evidence that the Township possessed additional records other than what was disclosed on June 13, 2022.

Accordingly, the Custodian did not unlawfully deny access to the May 25, 2022 OPRA request seeking "CCBC, change of use applications, and all other records available for public consumption." N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Township provided all responsive records. See Danis, GRC 2009-156, *et seq.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she 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. Notwithstanding the "deemed" denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's May 3, 2022 OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
3. Notwithstanding the "deemed" denial of access, the Custodian did not unlawfully deny access to the May 25, 2022 OPRA request "CCBC, change of use applications, and all

other records available for public consumption.” N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects that the Township of Franklin provided all responsive records. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

Prepared By: Maria M. Rossi
Staff Attorney

April 15, 2025