



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

April 29, 2025 Government Records Council Meeting

Nirav Shah
Complainant

GRC Complaint No. 2022-254

v.

Franklin Township Police Department (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 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). However, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant as part of the Statement of Information.

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**

**Nirav Shah¹
Complainant**

GRC Complaint No. 2022-254

v.

**Franklin Township Police Department (Somerset)²
Custodial Agency**

Records Relevant to Complaint: Hard copies for pickup of:

1. Police Accident report from incident No. 22023174
2. Bodycam footage of Complainant's interaction with Officer Casey
3. Recording of phone call between Officer Casey and Judge Vella

Custodian of Record: Jolanda Lacewell

Request Received by Custodian: May 11, 2022

Response Made by Custodian: None in writing.

GRC Complaint Received: June 8, 2022

Background³

Request and Response:

On May 11, 2022, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 12, 2022, Franklin Police Department employee Carissa LaSelva telephoned the Complainant confirming the OPRA request was received and requesting a forty-five (45) day extension to comply with the request. On May 31, 2022, the Complainant called Ms. LaSelva inquiring about the status of his OPRA request, at which time Ms. LaSelva said it was still pending.

Denial of Access Complaint:

On June 8, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that he submitted an OPRA request to the Custodian on May 11, 2022. The Complainant further stated that he received a telephone call from

¹ No legal representation listed on record.

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

Ms. LaSelva on May 12, 2022, informing him that she received the OPRA request and required a thirty (30) day extension of time to address it. The Complainant stated that he informed Ms. LaSelva that the requested records are time sensitive but that she told him she could not expedite a response.

The Complainant stated he telephoned Ms. LaSelva on May 31, 2022, to inquire about the status of his request. The Complainant stated Ms. La Selva informed him that the extension was for forty-five (45) business days rather than thirty (30) business days. The Complainant stated that he again reiterated the urgent nature of his request. The Complainant asserted the forty-five (45) business days, plus the base period, was excessive.

Statement of Information:

On June 27, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 11, 2022. The Custodian further certified that, on May 12, 2022, Ms. LaSelva telephoned the Complainant and verbally requested a forty-five (45) day extension to comply with his request. The Custodian certified that the Complainant called on May 31, 2022, inquiring about the status of his OPRA request and Ms. LaSelva informed him the request was still pending at that time.

The Custodian certified that she received a copy of the instant Denial of Access Complaint on June 14, 2022, and as part of the SOI response, provided the Complainant with a copy on CD of the bodycam footage with Officer Casey from April 28, 2022, prior to Officer Casey’s phone call with Judge Vella and the audio recording from Officer Casey to Judge Vella via e-mail. The Custodian further certified that the Complainant also requested a copy of the bodycam footage from Officer Casey’s interaction with him after the phone call with Judge Vella, but no responsive record could be located.⁴

The Custodian contends that although the Police Department provided a verbal response to the Complainant, the 45-day extension was reasonable as the Police Department receives numerous requests for bodycam videos and searching and redacting becomes cumbersome. Nevertheless, the Custodian argued that the Complainant received a copy of the audio recording and bodycam as part of the SOI. The Custodian concluded that because the Complainant has received all records in response to his OPRA request, the instant complaint should be dismissed.

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

⁴ The GRC notes that although the Complainant listed Officer Casey’s interaction with him “post-call with Judge” in the Records Denied List of the complaint, no such record was sought in his request.

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 OPRA request on May 11, 2022. In the SOI, the Custodian certified that Ms. LaSelva responded to the Complainant's request telephonically on May 12, 2022, requesting an extension of time. As such, although Ms. LaSelva verbally responded within the statutorily mandated seven (7) business day timeframe, the evidence of record reveals that the Custodian failed to timely respond *in writing* to the Complainant's OPRA request. The Custodian also certified that after receiving the complaint, she amassed all records responsive to the Complainant. The Custodian disclosed them as attachments to the SOI, which was simultaneously provided to the Complainant, and the GRC confirms that they sufficiently address the totality of the Complainant's OPRA request.

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. However, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant as part of the Statement of Information.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that 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). However, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant as part of the Statement of Information.

Prepared By: Maria M. Rossi
Staff Attorney

April 15, 2025

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.