



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

February 18, 2025 Government Records Council Meeting

Lisa M. Fittipaldi
Complainant

Complaint No. 2022-301

v.

City of Paterson (Passaic)
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 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 original 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 original 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 original Custodian disclosed all responsive records to the Complainant on July 7, 2022, and the Custodian included same 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 18th Day of February 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: February 20, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 18, 2025 Council Meeting**

**Lisa M. Fittipaldi¹
Complainant**

GRC Complaint No. 2022-301

v.

**City of Paterson (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via email of all 375's (signed and unsigned) for 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022 for a specific individual.

Custodian of Record: Jacqueline Murray³

Request Received by Custodian: June 22, 2022

Response Made by Custodian: July 7, 2022

GRC Complaint Received: July 5, 2022

Background⁴

Request:

On June 22, 2022, the Complainant submitted an Open Public Records Act ("OPRA") request to the original Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On July 5, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that she submitted her OPRA request to the City of Paterson ("City") on June 21, 2022, and was due a response on June 28, 2022. The Complainant noted that she left a message with the original Custodian on June 30, 2022, but did not receive a response to her request.

Response:

On July 7, 2022, the tenth (10th) business day after receipt of Complainant's request, the

¹ No legal representation listed on record.

² Represented by City of Paterson Corporation Counsel, Cristina Diaz-Salcedo, Esq. (Paterson, NJ).

³ Sonia Gordon, City Clerk, was the Custodian of Record at the time the Complainant filed her OPRA request.

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.

original Custodian responded in writing and provided electronic copies of seven (7) Personnel Action Forms (Form 3.75) for the specific individual. The Custodian advised that there were no 3.75 Forms generated for the years 2019 through 2022. The Custodian advised that said response was in full and final satisfaction to the Complainant's OPRA request.

Statement of Information:

On August 9, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on June 22, 2022. The Custodian certified that the Division of Personnel delivered "[a]ll 3.75 forms for [the specific individual] pertaining to the years in the OPRA request." The Custodian certified that on July 7, 2022, the original Custodian responded in writing disclosing to the Complainant all responsive records that existed. The Custodian noted the Complainant received the records on the same day as indicated by the "Read" receipt attached to the SOI.

The Custodian asserted that the City did not deny access to any responsive records. The Custodian averred that, instead, the original Custodian disclosed responsive records on July 7, 2022, and she was attaching same to the SOI. The Custodian requested that this complaint 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 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 her OPRA request on June 22, 2022, and subsequently filed this complaint asserting that the Custodian failed to respond to it. In the SOI, the Custodian certified that she received the subject OPRA request on June 22, 2022. The Custodian certified that the original Custodian responded in writing on July 7, 2022, the tenth (10th) business day after receipt of the Complainant's OPRA request, disclosing all responsive records. Thus, the evidence of record indicates that the original Custodian failed to respond to Complainant's OPRA request within the statutorily mandated seven (7) business day timeframe, resulting in a "deemed" denial of access.

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.

Based on the foregoing, the original Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. See N.J.S.A. 47:1A-6. As such, the original 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 original Custodian disclosed all responsive records to the Complainant on July 7, 2022 and the Custodian included same as part of the SOI.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the original 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 original 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 original Custodian disclosed all responsive records to the Complainant on July 7, 2022 and the Custodian included same as part of the Statement of Information.

Prepared By: Jennifer C. Howell
Staff Attorney

February 11, 2025