



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

April 30, 2024 Government Records Council Meeting

Jason Ritchwood
Complainant

Complaint No. 2022-435

v.

Village of South Orange (Essex)
Custodian of Record

At the April 30, 2024 public meeting, the Government Records Council (“Council”) considered the April 23, 2024 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 June 17, 2022 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to this OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). Further, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s June 20, 2022 OPRA request. As such, said OPRA request was similarly “deemed” denied. However, the GRC declines to order any further action because the Custodian responded on July 14, 2022 and August 22, 2022 (through Ms. White) disclosing the records responsive to the subject OPRA requests.

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 April 2024

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: May 2, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 30, 2024 Council Meeting**

**Jason Ritchwood¹
Complainant**

GRC Complaint No. 2022-435

v.

**Village of South Orange (Essex)²
Custodial Agency**

Records Relevant to Complaint:

June 17, 2022 OPRA request: Police Report for Summons No. E22004-647 (“Unauthorized Theft of Private Property”).

June 20, 2022 OPRA request: Body-worn camera (“BWC”) footage from June 20, 2022 between 1:00 p.m. and 1:30 p.m. of the Complainant during his visit to the Police Station regarding Summons NO. E22004-647 and all other footage.

Custodian of Record: Ojetti E. Davis

Request Received by Custodian: June 17, 2022; June 20, 2022

Response Made by Custodian: June 27, 2022; August 22, 2022

GRC Complaint Received: August 18, 2022

Background³

Request and Response:

On June 17, 2022 the Complainant submitted the first (1st) Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 20, 2022 the Complainant submitted the second (2nd) OPRA request to the Custodian seeking the above-mentioned records.

On June 27, 2022, the Custodian responded in writing advising that an extension of time until July 7, 2022 was “required to fulfill the request.” On July 14, 2022, the Custodian purportedly responded in writing disclosing to the Complainant an impound report responsive to the June 17, 2022 OPRA request.

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Denial of Access Complaint:

On August 18, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant checked “yes” to the question “[d]id you receive a reply to your request” on page 2 of the Denial of Access Complaint form with a date of June 27, 2022. However, the Complainant inputted “[n]one” under the “Response to request” column on page 4 of the form. The Complainant provided no additional statements or arguments identifying the reasons for his dispute.

Supplemental Response:

On August 22, 2022, approximately forty-four (44) business days after receipt of the OPRA request, Deputy Clerk Joycelyn E. White responded in writing on behalf of the Custodian e-mailing the Complainant a link to the video sought in the June 20, 2022 OPRA request. Ms. White further noted that the OPRA request was deemed closed.

Statement of Information:

On September 2, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian stated that the subject OPRA requests stem from the Complainant’s unregistered vehicle being impounded after it was located parked on a public roadway in violation of N.J.S.A. 39:3-4.⁴ The Custodian asserted that the Complainant alleged that he and his property were not subject to the statutory provision and has mischaracterized the incident as a “stolen property” issue. The Custodian stated that the Complainant sought a “stolen property” police report and BWC footage from his interaction at Police Headquarters requesting the return of his vehicle. The Custodian stressed that the Complainant’s vehicle was not stolen.

June 17, 2022 OPRA request

The Custodian certified that she received the Complainant’s OPRA request on June 17, 2022. The Custodian averred that because the OPRA request was submitted on the same date the vehicle was impounded, a report had not yet been created. The Custodian affirmed that after obtaining an extension through July 7, 2022, a completed impound report was provided to the Complainant on July 14, 2022.⁵

June 20, 2022 OPRA request

The Custodian certified that she received the Complainant’s OPRA request on June 20, 2022. The Custodian certified that the BWC footage sought “was not immediately available.” The

⁴ N.J.S.A. 39:3-4 provides, in part, that “[a] person owning or having control over any unregistered vehicle shall not permit the same to be parked or to stand on a public highway. Any police officer is authorized to remove any unregistered vehicle from the public highway to a storage space or garage, and the expense involved in the removal and storing of the vehicle shall be borne by the owner of the vehicle, except that the expense shall be borne by the lessee of a leased vehicle.”

⁵ The GRC notes that the Custodian did not include any supporting documentation showing her communications with the Complainant. Instead, she attached a copy of the OPRA request and disclosed impound report.

Custodian certified that once the requested footage became available, Ms. White responded in writing on her behalf on August 2, 2022 providing the Complainant a link to it.

The Custodian contended that ultimately, the report and BWC footage responsive to the Complainant's OPRA requests was provided to him and no unlawful denial of access occurred. The Custodian further argued that because the Complainant's vehicle was not stolen, no police report existed and the impound report was the responsive report. The Custodian also argued that the records were disclosed in the medium requested by the Complainant.

Additional Submissions:

On March 30, 2023, the Complainant submitted a sur-reply to the Custodian's SOI.⁶ The Complainant noted that the Custodian asserted that she properly responded, and that no denial occurred. The Complainant argued that this is contrary to the Custodian's admittance that a "deemed" denial of access occurred when she failed to respond to the June 17, 2022 OPRA request within the extended time frame.

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).⁷ 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).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the

⁶ On November 7, 2022, the GRC's regulations were readopted with amendments to include an SOI sur-reply schedule. N.J.A.C. 5:105-2.4(n). Although the Complainant filed this response well beyond the adopted sur-reply time frame, the GRC will consider it because that regulatory provision had not been adopted at the time of the SOI filing.

⁷ 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.

statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a “deemed” denial of access to the records.

[Id.]

In this matter, the Complainant submitted his June 17, 2022 OPRA request on the same day. The Custodian responded on June 27, 2022 extending the response time frame through July 7, 2022. The Custodian subsequently responded on July 14, 2022, five (5) business days after the expiration of the extended deadline, disclosing the impound report.⁸ Additionally, the Complainant submitted his June 20, 2022 OPRA request on the same day. This complaint followed on August 18, 2022; however, the Complainant’s reason for filing the instant complaint were unclear at the time of the filing.⁹ Later, the Complainant provided a more definitive reasoning in his SOI sur-reply by disputing the timeliness of the Custodian’s response to the June 17, 2022 OPRA request.

Regarding the June 17, 2022 OPRA request, the evidence of record supports that the Custodian failed to respond before the expiration of the extended time frame. That is, the Custodian did not respond again until five (5) business days after the expiration of the extended time frame. Thus, and like Kohn, GRC 2007-124, the Custodian’s failure to conform with the July 7, 2022 extended deadline results in a “deemed” denial of access. Regarding the June 20, 2022 OPRA request, the evidence of record supports that the Custodian did not respond in writing until August 22, 2022, well after the expiration of the statutorily mandated time frame. Thus, this OPRA request is similarly considered “deemed” denied.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s June 17, 2022 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to this OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. See also Kohn, GRC 2007-124. Further, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s June 20, 2022 OPRA request. As such, said OPRA request was similarly “deemed” denied. However, the GRC declines to order any further action because the Custodian responded on July 14, 2022 and August 22, 2022 (through Ms. White) disclosing the records responsive to the subject OPRA requests.

⁸ The GRC notes that to the extent the impound report did not exist at the time of the OPRA request, the Custodian was not required to disclose same once it came into existence. See Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012). See also Driscoll v. Sch. Dist. of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008).

⁹ The GRC notes that the Complainant’s Denial of Access Complaint borders on failing to state a claim: the Council has previously dismissed such complaints based on this procedural issue. See e.g., Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Georges v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2021-268 (February 2023).

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 June 17, 2022 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to this OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a "deemed" denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). Further, the Custodian did not bear her burden of proof that she timely responded to the Complainant's June 20, 2022 OPRA request. As such, said OPRA request was similarly "deemed" denied. However, the GRC declines to order any further action because the Custodian responded on July 14, 2022 and August 22, 2022 (through Ms. White) disclosing the records responsive to the subject OPRA requests.

Prepared By: Frank F. Caruso
Executive Director

April 23, 2024