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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 18, 2025 Government Records Council Meeting

Robin Henry
Complainant

Complaint No. 2022-561

v.

Fairfield Township Board of Education (Cumberland)
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 2025, Supplemental 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 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).
2. The Custodian did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that Board 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 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**

**Robin Henry¹
Complainant**

GRC Complaint No. 2022-561

v.

**Fairfield Township Board of Education (Cumberland)²
Custodial Agency**

Records Relevant to Complaint: Copies via email of:

1. “Regular and executive meeting with back up documentation of RICE of SBA for the November 22, 2021 meeting.”
2. “Back up documentation of executive meeting for June 29, 2022 meeting to term 60-day termination of SBA.”
3. “E-mail correspondence SBA Robin Henry with all staff between May 10, 2021- June 29, 2022 along with board members.”
4. “Leadership meetings minutes and board committee meetings minutes dated during the period of May 10, 2021 – June 29, 2022.”

Custodian of Record: Dr. Sean R. McCarron³

Request Received by Custodian: September 15, 2022

Response Made by Custodian: October 18, 2022

GRC Complaint Received: October 17, 2022

Background⁴

Request:

On September 15, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, Custodian’s Counsel responded acknowledging receipt of the OPRA request. On September 23, 2022, Custodian’s Counsel e-mailed the Complainant stating that the subject OPRA request was voluminous and may require a special service charge per N.J.S.A. 47:1A-5(c). Counsel thus asked the Complainant to contact him to discuss refining the OPRA request.⁵

¹ No legal representation listed on record.

² Represented by Philip E. Stern, Esq., of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C. (Warren, NJ)

³ Dr. Ja’Shanna Jones-Booker is listed as the original custodian of record.

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.

⁵ There is no evidence in the record to suggest that any discussion occurred or that the Complainant amended her OPRA request as a result of this e-mail.

On October 11, 2022, the Complainant emailed the Custodian following up on the OPRA request as the seven (7) business day statutory response time frame had passed, and no response had been received.

Denial of Access Complaint:

On October 17, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to her OPRA request within time. The Complainant contended that Custodian’s Counsel acknowledged receipt of the OPRA request but did not address the substance thereof. The Complainant asserted she sent follow up correspondence on October 11, 2022, but did not receive any substantive response to her OPRA request.

Response:

On October 18, 2022, the twenty-second (22nd) business day after receipt of the OPRA request, Custodian’s Counsel responded in writing on behalf of the Custodian providing the Complainant with 157 pages of records related to her OPRA request and simultaneously compiled thirteen (13) months of e-mails into a separate e-mail account created to store same. On October 19, 2022, the Custodian provided the Complainant with access to the e-mail account that contained 9,811 records. On the same day, the Complainant replied stating that two weeks’ worth of e-mails were missing from the disclosed but failed to specifically identify which weeks.

Statement of Information:⁶

On May 9, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 15, 2022. The Custodian certified that his search included locating all minutes from leadership and board meetings as well as compiling thirteen (13) months of e-mails. The Custodian certified that Custodian’s Counsel responded on his behalf on October 18, 2022, providing the Complainant with records responsive to item Nos. 1 and 4 above. The Custodian further affirmed that, on October 19, 2022, Custodian’s Counsel provided the Complainant access to 9,811 records responsive to OPRA request item No. 3. The Custodian certified that, after conducting a search, no “back up” documentation referred to in item No. 2 exists.⁷

The Custodian contended that the Complainant knew that certain items requested did not exist and specifically notes the “back-up documents” sought in item Nos. 2 and 4, because the Complainant was the Board Secretary during the time pertinent to her OPRA request. The Custodian thus argued that “any record not provided is due to the fact that it doesn’t exist.” The Custodian argued that all records responsive to the Complainant’s OPRA request have been provided and that no additional responsive records exist.

⁶ On November 10, 2022, this complaint was referred to mediation. On April 18, 2023, this complaint was referred back to the GRC for adjudication.

⁷ The Custodian certified that on December 27, 2022, following the filing of the Denial of Access Complaint, the Complainant was found on school property where she backed her car to the back of the building and an outside contractor loaded two boxes in her car. The contents of these boxes are unknown and is currently under investigation by the State Police and Prosecutors Office.

Robin Henry v. Fairfield Township Board of Education (Cumberland), 2022-561 – Findings and Recommendations of the Executive Director

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).⁸ 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 September 15, 2022 and subsequently filed this complaint asserting that the Custodian failed to respond to it. On October 18, 2022, the twenty-second (22nd) business day after receipt of the OPRA request, the Custodian responded through Custodian's Counsel providing the Complainant with responsive records to item Nos. 1 and 4 and indicated no responsive records existed related to item No. 2. In the SOI, the Custodian certified that he received the subject OPRA request on September 15, 2022, but did not respond in writing until October 18, 2022. Thus, the evidence clearly supports that a "deemed" denial of access occurred.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. See 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.

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. Id.; 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).

⁸ 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.

In the instant matter, the Complainant's OPRA request sought in part various meeting minutes as well as thirteen (13) months of her of e-mail correspondence. On October 18, 2022, the Custodian responded in writing with documents responsive to the request items for meeting minutes. On October 19, 2022, the Custodian certified he provided the Complainant access to a separate e-mail account that contained the 13 months of e-mails as requested. In the SOI, the Custodian certified that the records and e-mails provided in response to item Nos. 1, 3, and 4 were the only responsive documents that exist, and "any record not provided is due to the fact that it doesn't exist." The Custodian certified specifically that he had searched for and did not locate any records responsive to item No. 2; thus, none existed.

Upon review, the facts of this complaint are like those in Danis, GRC 2009-156, *et seq.* Specifically, the Custodian has certified that all records provided on October 18, and 19, 2022 represented those that exist. Moreover, the Complainant failed to present any evidence that the Custodian possessed additional documents other than what had already been provided.

Accordingly, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Custodian 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 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).
2. The Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that Board 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

February 11, 2025