



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

Scott Madlinger
Complainant

Complaint No. 2022-634

v.

Berkeley Township (Ocean)
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 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, notwithstanding the Custodian’s “deemed” denial, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant on November 7, 2022, and November 22, 2022.

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**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2022-634

v.

**Berkeley Township (Ocean)²
Custodial Agency**

Records Relevant to Complaint³:

1. Request dated October 26, 2022, 3:32 p.m. “A log of sent and received emails for Sophia Gingrich from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by Sophia Gingrich.”
2. Request dated October 26, 2022, 3:35 p.m. “A log of sent and received emails for John Bacchione from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by John Bacchione.”
3. Request dated October 26, 2022, 3:37 p.m. “A log of sent and received emails for L. Thomas Grosse Jr from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by L. Thomas Grosse Jr.”
4. Request dated October 26, 2022, 3:39 p.m. “A log of sent and received emails for Keith Buscio from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by Keith Buscio.”
5. Request dated October 26, 2022, 3:40 p.m. “A log of sent and received emails for James Byrnes from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by James Byrnes.”

¹ No legal representation listed on record.

² Represented by Robin La Bue, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriana, P.C. (Toms River, NJ).

³ The request numbers were inserted by the GRC to coincide with the numbering system used by the Custodian in the Statement of Information.

6. Request dated October 26, 2022, 3:42 p.m. “A log of sent and received emails for Angelo Guadagno from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by Angelo Guadagno.”
7. Request dated October 26, 2022, 3:44 p.m. “A log of sent and received emails for Michael Signorile from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by Michael Signorile.”
8. Request dated October 26, 2022, 3:46 p.m. “A log of sent and received emails for Beverly Carle from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by Beverly Carle.”
9. Request dated October 26, 2022, 3:47 p.m. “A log of sent and received emails for Karen Stallings from September 01, 2022 to October 26, 2022 which includes the sender name, recipient name(s), date, and subject line. This includes ALL email accounts used by Karen Stallings.”

Custodian of Record: Karen Stallings

Requests Received by Custodian: October 26, 2022

Responses Made by Custodian: November 7, 2022 and November 22, 2022

GRC Complaint Received: November 7, 2022⁴

Background⁵

Requests and Responses:

On October 26, 2022, the Complainant submitted nine (9) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On November 7, 2022, the eighth (8th) business day following receipt of said request, the Custodian responded in writing disclosing the records responsive to request item numbers 8 and 9, and requesting an extension of time until November 30, 2022, to respond to request items numbered 1 through 7. On November 22, 2022, the Custodian disclosed to the Complainant the records responsive to request items numbered 1 through 7.

Denial of Access Complaint:

On November 7, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on October 26, 2022, he

⁴ The GRC notes that the complaint was submitted via e-mail to the GRC and the Custodian on Sunday, November 6, 2022; therefore, it would have been received on the next business day: November 7, 2022.

⁵ 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.

submitted “multiple Opra (sic) requests for email logs of various employees/council members.” The Complainant further stated that on November 6, 2022, he “notified Lauren that there has not been any response to these opra (sic) requests. She said she would reach out to Karen.”

Statement of Information:

On March 17, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s nine (9) requests on October 26, 2022; however, she erroneously miscalculated the due date based upon receiving the requests on October 27, 2022. The Custodian certified that she responded to the requests on November 7, 2022, requesting an extension of time until November 30, 2022, for request items numbered 1 through 7, and disclosing the records responsive to request item numbers 8 and 9. The Custodian further certified that she disclosed the records responsive to request items numbered 1 through 7 on November 22, 2022. The Custodian certified that the Complainant received all records responsive to the nine (9) request items.

The Custodian attached copies of the requests and responses to the SOI. On the November 22, 2022 responses the Custodian added the following language: “[named individual] has advised that [he/she] regularly deletes all emails folders (sic) from [his/her] personal accounts and the IT department determined that when using a web-based e-mail (personal), the mail data is not stored on the computer . . . [a]s a result, emails that have been deleted from [his/her] personal email box cannot be recovered.”

Additional Submissions:

On December 3, 2024, the GRC e-mailed the Custodian’s Counsel a request for additional information. The GRC informed Counsel that the Custodian’s statement in the responses that the named individual regularly deletes all e-mail folders from his/her personal account and such e-mails cannot be recovered requires clarification from the Custodian. The GRC asked if any of the named individuals were using their personal e-mail accounts to conduct government business, and if so, whether such e-mails were deleted. The GRC cited Meyers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (December 2005).

On December 6, 2024, the Custodian replied to the GRC’s request for additional information. The Custodian certified that “[t]he statement made concerning the deletion of personal web-based email was added to each response in an attempt to explain to the requestor that, while government emails are maintained in the ordinary course, personal emails that do not pertain to public business are not maintained and are not required to be maintained by each individual.”

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must 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 accordingly 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).⁶ 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 requests on October 26, 2022. In the SOI, the Custodian conceded that she erroneously failed to timely respond to the OPRA requests by responding on the eighth (8th) business day instead of the seventh (7th) business day. The Custodian also certified that she disclosed all responsive records to the Complainant on November 7, 2022, and November 22, 2022.

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, notwithstanding the Custodian's "deemed" denial, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant on November 7, 2022, and November 22, 2022.

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, notwithstanding the Custodian's "deemed" denial, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant on November 7, 2022, and November 22, 2022.

Prepared By: John E. Stewart

February 11, 2025

⁶ 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.