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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

March 25, 2025 Government Records Council Meeting

Anthony Cesareo, Jr.
Complainant

Complaint No. 2023-104

v.

Port Authority of NY & NJ
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 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 this complaint should be dismissed because it was filed out of time pursuant to N.J.A.C. 5:105-2.1(a). Specifically, the Complainant failed to file a complaint within sixty (60) calendar days of his February 20, 2023 OPRA request being considered “deemed” denied. See Dalnoky v. Pinelands Reg’l Sch. Dist., 2023 N.J. Super. Unpub. LEXIS 2241 (App. Div. 2023). Additionally, the Complainant did not provide, nor does the record evidence show, that good cause exists to accept this complaint as within time. Finally, because this complaint is untimely filed, the GRC will not address the merits thereof.

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 25th Day of March 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: March 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

**Anthony Cesareo, Jr.¹
Complainant**

GRC Complaint No. 2023-104

v.

**Port Authority of NY & NJ²
Custodial Agency**

Records Relevant to Complaint: Copies of “all final reports such as investigation reports from inspector general, employee relations, operational services department, as well as conclusions and recommendations regarding any and all documents, including but not limited to reports involving, complaints made by or naming, discipline and personnel reports” about the Complainant.

Custodian of Record: William Shalewitz

Request Received by Custodian: February 20, 2023

Response Made by Custodian: None.

GRC Complaint Received: May 9, 2023

Background³

Request and Response:

On February 20, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 8, 2023, the Complainant e-mailed the Custodian stating that he “requested multiple times for a FOI submitted on [February 20, 2023]” and did not receive a response. The Complainant noted that he would submit his request in person if so advised.

Denial of Access Complaint:

On May 9, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant appeared to dispute the Custodian’s failure to respond to the subject OPRA request, which he alleged was submitted to the Custodian on February 20, 2023, and again on April 8, 2023. However, the Complainant provided no additional arguments or documentation supporting his position.

¹ No legal representation listed on record.

² Represented by Caitlin Sullivan, Esq. (New York, NY).

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.

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Statement of Information:⁴

On November 13, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on February 20, 2023. The Custodian certified that his search included forwarding the OPRA request to Human Resources. The Custodian certified that no response was provided to the Complainant.

The Custodian argued that the subject OPRA request was invalid because it sought records “regarding” or “involving” a broad subject matter. The Custodian asserted that New Jersey’s courts have held that requests seeking all documents “concerning” certain topics were not valid, citing Port Auth. Police Benevolent Ass’n v. Port Auth. of N.Y. & N.J., 2018 N.J. Super. Unpub. LEXIS 2785 (App. Div. 2018) and Burke v. Brandes, 429 N.J. Super. 169, 176-177 (App. Div. 2012). The Custodian noted that he intended to “work with the [Complainant] to revise and reframe” the subject OPRA request to identify specific records.

The Custodian certified that, nevertheless, two (2) reports appeared responsive to the Complainant’s OPRA request exist; however, both are exempt from access under the “inter-agency or intra-agency advisory, consultative, and deliberative material” exemption at N.J.S.A. 47:1A-1.1. The Custodian argued that each of those complaints included opinions and recommendations for consideration by management on certain personnel matters.

Analysis

Statute of Limitations

The GRC’s regulations provide that:

Any requestor who is denied access, in whole or in part, to a government record by a custodian, at the option of the requestor, may file a complaint with the Council pursuant to N.J.S.A. 47:1A-6. *Such filing shall be made* within 60-calendar days or, if the last day of the period is a Saturday, Sunday, or legal holiday, within the next business day, pursuant to N.J.A.C. 1:1-1.4, after the requestor receives a response from the custodian that grants or denies access or, if the custodian does not respond within seven business days of the request, *within 60-calendar days following the expiration of such seven-business-day period*, whichever is later, unless accompanied by a motion to file within time, showing good cause.

[N.J.A.C. 5:105-2.1(a) (emphasis added).]⁵

In Dalnoky v. Pinelands Reg’l Sch. Dist., 2023 N.J. Super. Unpub. LEXIS 2241 (App. Div. 2023), decided during the pendency of this complaint, plaintiff submitted an OPRA request in September 2020, which was denied by defendants on October 23, 2020. Thereafter, plaintiff submitted six (6) additional OPRA requests for the same records, the last of those on April 11,

⁴ On June 1, 2023, this complaint was referred to mediation. On October 23, 2023, this complaint was referred back to the GRC for adjudication.

⁵ The GRC notes that P.L. 2024, c. 16, effective September 3, 2024, codified a forty-five (45)-calendar day statute of limitations for all OPRA actions filed either with the New Jersey Superior Court or the GRC. N.J.S.A. 47:1A-6. Anthony Cesareo, Jr. v. Port of Authority of NY & NJ, 2023-104 – Findings and Recommendations of the Executive Director

2022. In the meantime, on December 23, 2021, plaintiff filed suit against defendants stating multiple claims including violations of OPRA. On March 5, 2022, plaintiff amended his complaint to address only his OPRA claims. The trial court held that the complaint was time-barred, noting that October 23, 2020, was the initial denial date and plaintiff failed to file within forty-five (45) calendar days thereof. The Appellate Division affirmed, holding that plaintiff could not “pick and choose denial dates in order to make his complaint timely.” Id. at 10. The court reasoned that, “[t]o allow plaintiff to start a new forty-five-day period by simply making an identical request would frustrate the purpose of the statute of limitations.” Id. at 10-11.

As a threshold issue, the Complainant alleged that the Custodian failed to respond to his February 20, 2023 OPRA request. The Complainant also alleged that he submitted a new OPRA request on April 8, 2023, to which he also did not receive a response. However, a review of the Denial of Access Complaint does not indicate that the Complainant submitted a new OPRA request on April 8, 2023. Instead, the Complainant appeared to be alerting the Custodian of his continued failure to respond to the February 20, 2023 OPRA request. Thus, the GRC finds that the “deemed” denial date on which the statute of limitations should be calculated is March 2, 2023, the eighth (8th) business day after receipt of the February 20, 2023 OPRA request. N.J.A.C. 5:105-2.1(a).

Taking March 2, 2023, as the first (1st) calendar day after the expiration of the seven (7) business day time frame, approximately sixty-eight (68) calendar days from the “deemed” denial date has passed. Thus, the statute of limitations clearly expired at the time the Complainant filed this complaint. Although decided during the pendency of this complaint, Dalnoky is instructive in confirming that the Complainant’s April 8, 2023 e-mail to the Custodian did not restart the statute of limitations. Also, the Complainant did not include in his filing a motion arguing good cause for the acceptance of this complaint within time.

Therefore, this complaint should be dismissed because it was filed out of time pursuant to N.J.A.C. 5:105-2.1(a). Specifically, the Complainant failed to file a complaint within sixty (60) calendar days of his February 20, 2023 OPRA request being considered “deemed” denied. See Dalnoky, 2023 N.J. Super. Unpub. LEXIS 2241. Additionally, the Complainant did not provide, nor does the record evidence show, that good cause exists to accept this complaint as within time. Finally, because this complaint is untimely filed, the GRC will not address the merits thereof.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because it was filed out of time pursuant to N.J.A.C. 5:105-2.1(a). Specifically, the Complainant failed to file a complaint within sixty (60) calendar days of his February 20, 2023 OPRA request being considered “deemed” denied. See Dalnoky v. Pinelands Reg’l Sch. Dist., 2023 N.J. Super. Unpub. LEXIS 2241 (App. Div. 2023). Additionally, the Complainant did not provide, nor does the record evidence show, that good cause exists to accept this complaint as within time. Finally, because this complaint is untimely filed, the GRC will not address the merits thereof.

Prepared By: Frank F. Caruso
Executive Director

March 18, 2025