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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

December 10, 2024 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2023-134

v.

Borough of Seaside Heights (Ocean)
Custodian of Record

At the December 10, 2024, public meeting, the Government Records Council (“Council”) considered the December 3, 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 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, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant prior to, or on the same day as, the expiration of the extended response time frame.

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 10th Day of December 2024

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: December 12, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 10, 2024 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2023-134

v.

**Borough of Seaside Heights (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the following regarding a motor vehicle accident on Freemont Avenue on May 26, 2023:

1. All police body worn camera footage.
2. All photographs and videos of the accident.
3. First five (5) 911 calls regarding the accident.
4. All summonses issued, including CDR-1s and CDR-2s.
5. All accident reports involving the incident.
6. All arrest reports.

Custodian of Record: Diane Stabley

Request Received by Custodian: May 30, 2023

Response Made by Custodian: June 12, 2023

GRC Complaint Received: June 13, 2023

Background³

Request and Response:

On May 30, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

On June 12, 2023,⁴ the ninth (9th) business day after receipt of the OPRA request, Deputy Clerk Victoria Coppola responded in writing on behalf of the Custodian seeking an extension of thirty (30) calendar days because the May 26, 2023 accident was still under investigation.

¹ No legal representation listed on record.

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

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.

⁴ Ms. Coppola’s response seeking an extension occurred as a result of the Complainant copying the Custodian on his Denial of Access Complaint filing on the same day.

Denial of Access Complaint:

On June 13, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to his OPRA request in a timely manner.

Statement of Information:

On July 12, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 30, 2023. The Custodian averred that while the Borough of Seaside Heights Police Department (“SHPD”) responded to the accident, the Ocean County Prosecutor’s Office (“OCPO”) immediately took control of the investigation. The Custodian further averred that some of the requested records were not yet prepared at the time she received the subject OPRA request. The Custodian also asserted she could not release records without approval from OCPO.

The Custodian certified that Ms. Coppola responded in writing on her behalf on June 12, 2023, admittedly the ninth (9th) business day after receipt of the OPRA request, extending the response time frame thirty (30) calendar days. The Custodian certified that, thereafter, she disclosed all responsive records with minor redactions to the Complainant prior to or on the same day as the expiration of the extended response 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).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 his OPRA request on May 30, 2023. On June 12, 2023, after not receiving a response, the Complainant sent his complaint to the GRC via e-mail copying the Custodian. Shortly thereafter, Ms. Coppola responded on the Custodian’s behalf extending the response time frame thirty (30) calendar days. In the SOI, the Custodian conceded that her response through Ms. Coppola occurred on the ninth (9th) business day after receipt of the OPRA request. The Custodian also certified that all records were disclosed to the Complainant prior to, or on the same day as, the expiration of the extended response time frame.

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.

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, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant prior to, or on the same day as, the expiration of the extended response time frame.

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, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant prior to, or on the same day as, the expiration of the extended response time frame.

Prepared By: Frank F. Caruso
Executive Director

December 3, 2024