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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

Jason Ritchwood
Complainant

Complaint No. 2023-21

v.

Village of South Orange (Essex)
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 no “deemed” denial of access occurred here because, notwithstanding the unnotified GovPilot delivery failure issue, the Custodian timely responded in writing within the statutory time frame, as extended, applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Anonymous v. Borough of Haledon (Passaic), GRC Complaint No. 2022-222 (October 2023).

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**

**Jason Ritchwood¹
Complainant**

GRC Complaint No. 2023-21

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of the “Full name, Rank, Employment Contract, Salary and all training offered and completed for” five (5) Village of South Orange Police Department (“SOPD”) officers.

Custodian of Record: Ojetti Davis
Request Received by Custodian: January 5, 2023
Response Made by Custodian: January 13, 2023
GRC Complaint Received: February 2, 2023

Background³

Request and Response:

On January 5, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 13, 2023, the Custodian responded in writing extending the response time frame through January 26, 2023. On January 19, 2023, the Custodian responded in writing disclosing the responsive records.

Denial of Access Complaint:

On February 2, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted the Custodian extended the response time frame through January 26, 2023, but failed to disclose responsive records by that date. The Complainant thus contended that his OPRA request was “deemed” denied.

¹ No legal representation listed on record.

² Represented by Siobhan Beere, Esq., of Post, Polak, P.A. (Roseland, 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.

Supplemental Response:

On February 2, 2023, the Custodian e-mailed the Complainant stating that the Village of South Orange (“Village”) responded to the subject OPRA request on January 19, 2023. The Custodian asked the Complainant to check his “spam folder” for an e-mail from noreply@govpilot.com in the event the response was blocked. The Custodian also noted that she was attaching the records disclosed as part of the January 19, 2023 response and would attempt to resend the response through GovPilot. The Custodian requested that the Complainant withdraw this complaint. Shortly thereafter, the Custodian resent the January 19, 2023 response to the Complainant through GovPilot. About a thirty (30) minutes later, the Custodian e-mailed the Complainant asking him to confirm whether he received the resent e-mail from GovPilot.

On February 22, 2023, Custodian’s Counsel e-mailed the Complainant stating that the Village twice responded to the subject OPRA request on January 19, 2023, and February 2, 2023 through GovPilot via noreply@govpilot.com. Counsel expressed her concern that the Complainant’s e-mail account rejected the responses as spam, “promotion,” “social,” or other types of rejectable e-mails. Counsel stated that she was again attaching the response and sought confirmation from the Complainant that he received same. Counsel also asked the Complainant to withdraw the complaint if he was satisfied with the attached.⁴

Statement of Information:⁵

On April 11, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 5, 2023. The Custodian certified that her search included forwarding the request to SOPD, who produced multiple responsive records. The Custodian affirmed that on January 13, 2023, she responded in writing extending the response time frame through January 26, 2023. The Custodian certified that on January 18, 2023, responsive records were uploaded to the GovPilot portal. The Custodian certified that on January 19, 2023, Deputy Clerk Joycelyn White prepared the response and caused same to be sent on her behalf through the GovPilot system. The Custodian affirmed that it was not until receipt of this complaint that the Village became aware of a response issue.

The Custodian stated that the Village, like many municipalities, contracts with GovPilot to manage and process OPRA requests. The Custodian averred that the system notifies the Village of an OPRA request filed through GovPilot and automatically creates an individual workflow. The Custodian stated that agency personnel manage the OPRA request through the workflow and load any responses and applicable records into it. The Custodian stated that once the OPRA request is marked “closed” in the workflow, GovPilot automatically sends the response and applicable records to the requestor.

The Custodian averred that here, the Village conducted the same process outlined above and included the GovPilot action report supporting her position. The Custodian certified that on

⁴ The Complainant confirmed receipt of this e-mail in a separate e-mail to the GRC on February 22, 2023 seeking an update on whether the Village agreed to mediate the complaint.

⁵ On March 2, 2023, this complaint was referred to mediation. On March 24, 2023, this complaint was referred back to the GRC for adjudication.

January 19, 2023, when Ms. White marked the OPRA request “closed” in GovPilot; it was assumed that the system sent the response. The Custodian asserted that unbeknownst to her office, GovPilot never sent the response, and Ms. White did not receive any notification of the delivery failure. The Custodian averred that it was not until the filing of this complaint that the Village was made aware of GovPilot’s delivery failure. The Custodian noted that a GovPilot Solution Specialist confirmed this error was program-based and a “one in a million fluke.” The Custodian further noted that the Specialist confirmed GovPilot were working on a solution to alert users when a delivery failure occurs.

The Custodian argued that the evidence of record supports that the Village responded to the OPRA request well within the extended time frame, but that a GovPilot software error caused the “deemed” denial. The Custodian asserted that this issue would have been discovered and addressed had the Complainant contacted her instead of filing this complaint. The Custodian averred that upon notification of the error through this complaint, the Village responded and redisclosed the records on twice, once on February 2, 2023 and again on February 22, 2023.⁶

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 Anonymous v. Borough of Haledon (Passaic), GRC Complaint No. 2022-222 (October 2023), the complainant argued that the custodian failed to time respond to a January 19, 2021 OPRA request. In the SOI, the custodian certified that he responded through the GovPilot system on January 26, 2021; however, the delivery failed because the file size was too large. The custodian further certified that GovPilot did not notify staff of the failure, and that he rectified the issue by disclosing the record in smaller parts shortly after being made aware of the issue through the complaint filing. Upon consideration, the Council held that no “deemed” denial of access occurred reasoning that:

⁶ The Custodian also argued that the Complainant was not a prevailing party entitled to an award of attorney’s fees because he was a *pro se* filer. However, the Complainant did not request an award of fees; thus, any arguments regarding this issue are irrelevant to this adjudication.

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.

[T]he Borough endeavored to respond in a timely manner, yet unbeknownst to the Custodian or staff, said response was rejected. It is not the case here that the Custodian either intended to but did not send his response at all or committed a typographical error of the Complainant's e-mail address. See e.g. Owoh, Esq. (O.B.O. AADARI) v. City of Asbury Park (Monmouth), GRC Complaint No. 2018-211 (August 2020). Instead, the Custodian fully responded and was not made aware of any delivery failures until the filing of this complaint many months after the fact. For this reason, the GRC cannot reasonably find that GovPilot's system not sending a delivery failure notification to the Custodian amounts to "deemed" denial of access here.

[Id. at 3.]

Here, the Complainant submitted his OPRA request and, following an extension of time through January 26, 2023, Ms. White caused a response to be sent through GovPilot on January 19, 2023. This complaint followed, wherein the Complainant alleged a "deemed" denial of access after not receiving the response. The Custodian immediately moved to rectify the issue, noting that the response e-mail may have been sent to a "spam folder." In the SOI, the Custodian certified that a GovPilot error resulted in the response never being sent and the system did not alert the Village to this delivery failure. Although decided during the pendency of this complaint, Anonymous, GRC 2022-222 provides significant guidance here, and suggests and that a similar holding here is appropriate.

Therefore, no "deemed" denial of access occurred here because, notwithstanding the unnotified GovPilot delivery failure issue, the Custodian timely responded in writing within the statutory time frame, as extended, applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Anonymous, GRC 2022-222.

In closing, the GRC notes that it does not take a position on whether the GovPilot delivery failure notification issue rarely occurs. However, agencies utilizing third party online OPRA request systems may consider as a best practice reviewing that system though the applicable reporting functions on a regular basis. Such a practice could ensure that any unnoticed delivery failures are rectified in a timely manner and without the need for litigation.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that no "deemed" denial of access occurred here because, notwithstanding the unnotified GovPilot delivery failure issue, the Custodian timely responded in writing within the statutory time frame, as extended, applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Anonymous v. Borough of Haledon (Passaic), GRC Complaint No. 2022-222 (October 2023).

Prepared By: Frank F. Caruso
Executive Director

March 18, 2025