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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

May 20, 2025 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2023-86

v.

Jackson Township (Ocean)
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council (“Council”) considered the May 13, 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:

1. 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 dated October 31, 2007).
2. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose the requested e-mail log. Paff v. Galloway, 229 N.J. 340 (2017). See Percella v. City of Bayonne (Hudson), GRC Complaint No. 2018-20 (Interim Order dated November 12, 2019).
3. **The Custodian shall comply with conclusion No. 2 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 20th Day of May 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: May 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 20, 2025 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2023-86

v.

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

Records Relevant to Complaint: Copies via e-mail of “[a] log of sent and received emails for Mary Moss from March 01, 2023 to April 04, 2023 which includes the sender name, recipient name(s), date, and subject line.”

Custodian of Record: Mary Moss

Request Received by Custodian: April 4, 2023

Response Made by Custodian: None

GRC Complaint Received: April 18, 2023

Background³

Request:

On April 4, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 14, 2023, the Complainant transmitted an e-mail to Kelsey Anthony, Esq. at Dasti, Murphy, McGuckin, Ulaky & Connors stating, “I have another one that was due today, that was sent directly to Mary, after they changed their emails (Danielle/Mary) and there has been no response.”

Denial of Access Complaint:

On April 17, 2023, at 11:36 a.m., the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted an OPRA request to Jackson Township on April 4, 2023, and did not receive a response. The Complainant further stated that on April 14, 2023, “I sent Kelsey email (sic) telling her there has been no response to this opira (sic) request.” The Complainant stated that on April 17, 2023, “I told Mary I would be filing this denial of access.”

¹ No legal representation listed on record.

² No legal representation listed on record.

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 April 17, 2023, at 2:02 p.m., the Custodian e-mailed the Complainant and informed him that an extension of time until April 26, 2023, was required to complete his request.

Statement of Information:

On April 21, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s request on April 4, 2023. The Custodian further certified that no records were disclosed to the Complainant because an extension of time was needed so that the responsive e-mail log could be forwarded to legal counsel for redaction review.

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).⁴ 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 dated October 31, 2007).

Here, the Complainant submitted the OPRA request on April 4, 2023. Having received no response from the Custodian, on the eighth (8th) business day following transmittal of the request to the Custodian the Complainant filed a Denial of Access Complaint.

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.

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

⁴ 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.

“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 Paff v. Galloway, 229 N.J. 340 (2017), the Supreme Court, holding that basic e-mail information stored electronically is a “government record” under OPRA, required a custodian to disclose information stored or maintained electronically. The court reasoned that:

A document is nothing more than a compilation of information -- discrete facts and data. By OPRA’s language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.

[Id. at 353]

To perform such a task the court stated that “[e]xtracting [e-mail log] information requires ‘programming of information technology,’ *Ibid.*, a function the Legislature clearly envisioned the municipality performing, providing it has the means of doing so.” Id. at 354.

In Percella v. City of Bayonne (Hudson), GRC Complaint No. 2018-20 (Interim Order dated November 12, 2019), the custodian denied the complainant’s request for e-mail log information from three (3) identified accounts. The Council, citing a plain reading of the court’s decision in Paff, 229 N.J. 340, required the custodian to produce the responsive e-mail logs sought by the complainant.

Here, Jackson Township appears to have had the means of extracting the e-mail log information requested by the Complainant and indeed compiled such a log because, as the Custodian certified in the SOI, the log needed to be forwarded to legal counsel for review. The evidence of record, however, is devoid of any correspondence or other documentation to indicate that the Custodian subsequently disclosed the requested e-mail log to the Complainant.

Therefore, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose the requested e-mail log. Paff, 229 N.J. 340. See Percella, GRC 2018-20.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. 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 dated October 31, 2007).

2. The Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose the requested e-mail log. Paff v. Galloway, 229 N.J. 340 (2017). See Percella v. City of Bayonne (Hudson), GRC Complaint No. 2018-20 (Interim Order dated November 12, 2019).
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Prepared By: John E. Stewart

May 13, 2025