



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 25, 2013 Government Records Council Meeting

Helen Arnold
Complainant

Complaint No. 2012-220

v.

Morristown Housing Authority (Morris)
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council (“Council”) considered the June 18, 2013 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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Additionally, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the requested budgets.
2. The Custodian did not unlawfully deny access to request item no. 4 because the Custodian made the records available for the Complainant’s onsite review and subsequent copying upon payment of the per page copy fee. See Rivera v. City of Passaic (Passaic), GRC Complaint No. 2011-214 (September 2012).

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 June, 2013



I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Acting Chair
Government Records Council

Decision Distribution Date: June 27, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2013 Council Meeting**

**Helen Arnold¹
Complainant**

GRC Complaint No. 2012-220

v.

**Morristown Housing Authority (Morris)²
Custodian of Records**

Records Relevant to Complaint:

1. All bills submitted to the Morristown Housing Authority from the law firm of Manfredi & Pellechio regarding their investigation into the residential addresses of Ronald Dumas, Earnest Charles and Loretta Dumas.
2. All bills submitted to the Morristown Housing Authority from the law firm of Manfredi & Pellechio regarding their representation of the Morristown Housing Authority in the proceeding to terminate Loretta Dumas' Section 8 benefits.
3. All bills submitted to the Morristown Housing Authority from the law firm of Manfredi & Pellechio regarding their representation of Marion Sally and Vera White in the lawsuit entitled Marion E. Sally and Vera White v. Paul M. Bangiola, Esq., Docket No. MRS-L-2293-11.
4. Morristown Housing Authority's budget for fiscal years 2011 and 2012.

Request Made: March 22, 2012³

Response Made: April 9, 2012 and July 25, 2012

GRC Complaint Filed: July 20, 2012⁴

Background⁵

Request and Response:

On March 22, 2012, the Complainant submitted an Open Public Records Act ("OPRA") request seeking the above-listed records. On April 9, 2012, the eleventh (11th) business day following receipt of said request, the Custodian responded in writing stating that she will provide

¹ No legal representation listed on record.

² Leanora Gross, Custodian of Records. Represented by Joseph A. Manfredi, Esq., of Manfredi & Pellechio (Hoboken, NJ).

³ The Complainant's March 22, 2012 OPRA request is a clarification of her December 8, 2011 OPRA request, of which the Custodian sought clarification claiming the request was overly broad.

⁴ The GRC received the Denial of Access Complaint on said date.

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.

copies of the requested bills with any attorney-client privileged information redacted. N.J.S.A. 47:1A-1.1. The Custodian requests a 14-calendar day extension of time to fulfill request item nos. 1-3 due to the voluminous nature of said requests. Additionally, the Custodian states that the requested budgets are available for review at the Housing Authority's office during regular business hours and that she will provide the Complainant with copies of the requested budgets upon payment of the \$0.05 copy cost for letter sized pages and \$0.07 copy cost for legal sized pages. On May 23, 2012, the Complainant e-mailed the Custodian asking for the final copy cost of the requested budgets so that she could submit payment. On June 13, 2012, the Complainant again e-mailed the Custodian seeking the copy cost for the requested budgets. On July 25, 2012, the Custodian's Counsel provided the bills responsive to request item nos. 1-3 to the Complainant with attorney-client privilege and attorney work product redacted.

Denial of Access Complaint:

On July 20, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant states that on April 9, 2012, the Custodian indicated that she would provide the requested records upon receipt of the \$0.05 copy cost for letter sized pages and \$0.07 copy cost for legal sized pages. On May 23, 2012, the Complainant e-mailed the Custodian asking for the final copy cost so that she could submit payment. On June 13, 2012, the Complainant again e-mailed the Custodian seeking the copy cost for the requested records. The Complainant states that she has not received any further response from the Custodian, nor has she received any records in response to her request.

Statement of Information:

On August 30, 2012, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that she received the Complainant's OPRA request on March 22, 2012. The Custodian certifies that she responded to the request on April 9, 2012, advising that the records responsive to request item nos. 1-3 would be provided with redactions to protect attorney-client privileged information and the privacy of Section 8 recipients. N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-1. The Custodian certifies that the records responsive to request item nos. 1-3 were hand delivered to the Complainant's residence on July 25, 2012, with redactions for attorney-client privileged information. Additionally, the Custodian certifies that the records responsive to request item no. 4 were made available to the Complainant on April 9, 2012, by advising that the records could be copied at the Housing Authority's office. The Custodian certifies that the Complainant failed to appear at the Housing Authority's office, but that the records remain available. Additionally, the Custodian certifies that as an act of good faith, she will have the records hand delivered to the Complainant and will advise her of the copying cost.

Analysis⁶

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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Additionally, a custodian must ordinarily provide immediate access to budgets. N.J.S.A. 47:1A-5(e).

Here, the Custodian certified that she received the Complainant's OPRA request on March 22, 2012, and initially responded on April 9, 2012, the eleventh (11th) business day following receipt of said request. In said response, the Custodian sought a 14-calendar day extension of time, expiring on April 23, 2012, to fulfill request item nos. 1-3. The Custodian certified that she had the records responsive to request item nos. 1-3 hand delivered to the Complainant's residence on July 25, 2012, approximately three (3) months after the extended deadline date.⁸ Additionally, the Custodian made the requested budgets available to the Complainant on April 9, 2012.

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, supra. Additionally, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the requested budgets.

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 "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.

⁶ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

⁷ It is the GRC's position that 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.

⁸ The Complainant does not challenge the redactions made to the requested bills, thus, the Council will not address the appropriateness of said redactions.

In Rivera v. City of Passaic (Passaic), GRC Complaint No. 2011-214 (September 2012), the Council held that the custodian was in compliance with the Council's Interim Order because the custodian "made available to the Complainant all records ordered for disclosure..." Specifically, the Custodian certified that she would disclose the requested records to the Complainant upon payment of a \$15.00 copying fee which reflects the cost for three hundred pages of copies at \$0.05 per page.

Here, the Custodian responded to the Complainant's OPRA request on April 9, 2012, and made the records responsive to request item no. 4 available to the Complainant by advising her the records could be reviewed at the Housing Authority's office during regular business hours. The Custodian further advised the Complainant that she would provide copies of the records upon payment of the \$0.05 copy cost for letter sized pages and \$0.07 copy cost for legal sized pages. Although the Custodian failed to provide the Complainant with the specific copy cost, the Custodian made the records available for the Complainant's onsite review, and subsequent copying upon payment of the per page fee. The Complainant's OPRA request did not specify any particular method of delivery for the records, thus, the Custodian's offer of onsite review and subsequent copying of the records was not unreasonable.

Therefore, the Custodian did not unlawfully deny access to request item no. 4 because the Custodian made the records available for the Complainant's onsite review and subsequent copying upon payment of the per page copy fee. *See Rivera, supra.*

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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Additionally, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the requested budgets.
2. The Custodian did not unlawfully deny access to request item no. 4 because the Custodian made the records available for the Complainant's onsite review and subsequent copying upon payment of the per page copy fee. *See Rivera v. City of Passaic (Passaic)*, GRC Complaint No. 2011-214 (September 2012).

Prepared By: Dara L. Barry
Communications Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

June 18, 2013