



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

January 26, 2016 Government Records Council Meeting

G. Harold Christian
Complainant

Complaint No. 2015-11

v.

City of Newark (Essex)
Custodian of Record

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 2016 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Council dismisses this complaint because the Complainant withdrew same via e-mail to the GRC on January 7, 2016. Therefore, no further adjudication is required.

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 26th Day of January, 2016

Robin Berg Tabakin, Esq., 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: January 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
January 26, 2016 Council Meeting

G. Harold Christian¹
Complainant

GRC Complaint No. 2015-11

v.

City of Newark (Essex)²
Custodial Agency

Records Relevant to Complaint:

May 27, 2014 OPRA request: Electronic copies via e-mail of the following, related to twenty (20) checks:

1. Any record identifying the full names of the payees, such as a vendor screenshot or invoice.
2. Any record including the payee's current address.
3. Any record reflecting the reasons why any particular check would not be re-issued.

September 22, 2014 OPRA request: Electronic copies via e-mail of the following, related to Check No. 5951 (Winner Ford) in amount of \$78,760.52:

1. The front and back of the replacement check.
2. If no replacement check was issued, records reflecting when same will be issued.
3. If no replacement check will be issued, records reflecting the reason why.

October 7, 2014 OPRA request: Electronic copies via e-mail of the following, related to Check No. 1945 (Verizon) in the amount of \$3,902.46:

1. All requests by anyone to replace this check, such as payee, a third party, or money finder/asset recovery firm.
2. Screenshot reflecting the payee's address associated with issuance of this check, or the payee's address by return e-mail if no record exists.
3. All screenshots reflecting the details of the payables or invoices that caused the issuance of this check. If no screenshot exists, provide existing individual records including but not limited to underlying invoices.
4. Record confirming that the check was replaced, such as the front and back of the replacement check.

¹ No legal representation listed on record.

² Represented by Michael Witt, Esq., of Chasan, Leyner & Lamparello, PC (Newark, NJ).

5. Record confirming that the check has been: 1) escheated, 2) voided, 3) issued a stop payment, or 4) is otherwise not eligible to be replaced.
6. All internal and external correspondence, including e-mails and attachments, between Danielle Smith, Darlene Tate, David Torres, Kimberly Fisher, and Joyce Lanier between July 16, 2013, and present regarding the check or the keywords “Verizon” and “Christian.”
7. All records including but not limited to balance sheet details, bank statements, bank reconciliation details, uncashed check registers, *etc.*, showing the accounting of funds associated with the check as of this date.

Custodian of Record: Kenneth Louis³

Request Received by Custodian: May 27, 2014, September 22, 2014, and October 7, 2014

Response Made by Custodian: June 11, 2014, September 23, 2014, and October 8, 2014

GRC Complaint Received: January 12, 2015

Background

December 15, 2015 Council Meeting:

At its December 15, 2015 public meeting, the Council considered the November 10, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. The original Custodian did not bear his burden of proof that he timely responded to the Complainant’s May 27, 2014, OPRA request. N.J.S.A. 47:1A-6. As such, the original 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).
2. The original Custodian did not bear his burden of proof that he timely responded to the Complainant’s September 22, and October 8, 2014, OPRA requests based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6. As such, the original Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
3. The Custodian or individuals within the City of Newark, to include those working on the Complainant’s three (3) OPRA requests within the Department of Finance, may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The

³ Robert P. Marasco, the original Custodian of Record, retired on January 1, 2015.

Custodian and/or individuals from the Department of Finance that conducted the search must locate and provide any remaining records responsive to the Complainant's three (3) OPRA requests. However, if the Custodian and Finance determine, following an appropriate search, that no responsive records exist, the Custodian and/or individuals from Finance must certify to that fact. Moreover, the Custodian and/or individuals from the Department of Finance must provide a detailed explanation of the search conducted to locate all records responsive to the OPRA requests.

4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions (if necessary), including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director.⁵**
5. The Council defers analysis of whether the Custodian or any other employee of the City knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On December 16, 2015, the Council distributed its Interim Order to all parties. On December 22, 2015, Guenther Waldow, Jr., Assistant Corporation Counsel for the City of Newark, requested additional time until January 6, 2016, to respond to the Council's Order. On December 23, 2015, the GRC granted Mr. Waldow's request for an extension until January 6, 2016. On January 6, 2016, the Custodian's Counsel filed a request for reconsideration of the Council's Order.

On January 7, 2016, the Complainant withdrew this complaint via e-mail to the GRC.

Analysis

No analysis required.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If the Complainant incurred a copying or special service charge, the Custodian must certify that the record has been *made available* to the Complainant, but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss this complaint because the Complainant withdrew same via e-mail to the GRC on January 7, 2016. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover
Executive Director

January 19, 2016



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

December 15, 2015 Government Records Council Meeting

G. Harold Christian
Complainant

Complaint No. 2015-11

v.

City of Newark (Essex)
Custodian of Record

At the December 15, 2015 public meeting, the Government Records Council (“Council”) considered the November 10, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The original Custodian did not bear his burden of proof that he timely responded to the Complainant’s May 27, 2014, OPRA request. N.J.S.A. 47:1A-6. As such, the original 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).
2. The original Custodian did not bear his burden of proof that he timely responded to the Complainant’s September 22, and October 8, 2014, OPRA requests based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6. As such, the original Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
3. The Custodian or individuals within the City of Newark, to include those working on the Complainant’s three (3) OPRA requests within the Department of Finance, may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian and/or individuals from the Department of Finance that conducted the search must locate and provide any remaining records responsive to the Complainant’s three (3) OPRA requests. However, if the Custodian and Finance determine, following an appropriate search, that no responsive records exist, the Custodian and/or individuals from Finance must certify to that fact. Moreover, the



Custodian and/or individuals from the Department of Finance must provide a detailed explanation of the search conducted to locate all records responsive to the OPRA requests.

4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions (if necessary), including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
5. The Council defers analysis of whether the Custodian or any other employee of the City knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 15th Day of December, 2015

Robin Berg Tabakin, Esq., 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 16, 2015

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If the Complainant incurred a copying or special service charge, the Custodian must certify that the record has been *made available* to the Complainant, but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 15, 2015 Council Meeting**

**G. Harold Christian¹
Complainant**

GRC Complaint No. 2015-11

v.

**City of Newark (Essex)²
Custodial Agency**

Records Relevant to Complaint:

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1. All requests by anyone to replace this check, such as payee, a third party, or money finder/asset recovery firm.
2. Screenshot reflecting the payee's address associated with issuance of this check, or the payee's address by return e-mail if no record exists.
3. All screenshots reflecting the details of the payables or invoices that caused the issuance of this check. If no screenshot exists, provide existing individual records including but not limited to underlying invoices.
4. Record confirming that the check was replaced, such as the front and back of the replacement check.

¹ No legal representation listed on record.

² Represented by Willie Parker, Esq. (Newark, NJ).

5. Record confirming that the check has been: 1) escheated, 2) voided, 3) issued a stop payment, or 4) is otherwise not eligible to be replaced.
6. All internal and external correspondence, including e-mails and attachments, between Danielle Smith, Darlene Tate, David Torres, Kimberly Fisher, and Joyce Lanier between July 16, 2013, and present regarding the check or the keywords “Verizon” and “Christian.”
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Custodian of Record: Kenneth Louis³

Request Received by Custodian: May 27, 2014, September 22, 2014, and October 7, 2014

Response Made by Custodian: June 11, 2014, September 23, 2014, and October 8, 2014

GRC Complaint Received: January 12, 2015

Background⁴

Request and Response:

May 27, 2014 OPRA request:

On May 27, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On June 11, 2014, the eleventh (11th) business day after receipt of the OPRA request, Soraida Lara responded in writing on behalf of the original Custodian and provided records for one (1) of the twenty (20) checks.

On June 25, 2014, the original Custodian responded in writing, advising the Complainant that an extension of time until July 18, 2014, was necessary for the City of Newark’s (“City”) Department of Finance (“Finance”) to conduct a search. On July 18, 2014, the Complainant e-mailed the original Custodian to seek a status update. Ms. Lara responded, advising the Complainant that she was still waiting for Finance to provide her with an update. On July 24, 2014, Ms. Lara e-mailed the Complainant advising that Finance had not yet provided a response.

On September 11, 2014, the original Custodian responded in writing, advising the Complainant that a second (2nd) extension of time until October 10, 2014 was necessary for Finance to conduct a search. On October 9, 2014, Ms. Lara responded in writing on behalf of the original Custodian, advising the Complainant that a third (3rd) extension until October 21, 2014, was necessary. However, on October 10, 2014, Ms. Lara amended the date to November 14, 2014, because Finance was waiting for the City’s bank to produce certain records.

On October 28, 2014, Ms. Lara e-mailed the Complainant, reminding him that the City would respond by November 14, 2014. However, on November 18, 2014, Ms. Lara e-mailed the

³ Robert P. Marasco, the original Custodian of Record, retired on January 1, 2015.

⁴ 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.

Complainant advising that a fourth (4th) extension until December 5, 2014, was necessary. On December 5, 2014, Ms. Lara e-mailed the Complainant, advising that a fifth (5th) extension until December 31, 2014, was necessary. On December 31, 2014, Ms. Lara e-mailed the Complainant, advising that a sixth (6th) extension of time until January 23, 2015 was necessary.

September 22, 2014 OPRA request:

On September 22, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On September 23, 2014, Ms. Lara responded in writing on behalf of the original Custodian, stating that an extension of time until October 24, 2014, was necessary. On October 28, 2014, Ms. Lara e-mailed the Complainant, advising that a second (2nd) extension until November 21, 2014, was necessary for Finance to process the OPRA request. On November 18, 2014, Ms. Lara e-mailed the Complainant, advising that a third (3rd) extension until December 5, 2014, would be necessary. On December 5, 2014, Ms. Lara e-mailed the Complainant, advising that a fourth (4th) extension until December 31, 2014, was necessary. On December 31, 2014, Ms. Lara e-mailed the Complainant, advising that a fifth (5th) extension of time until January 23, 2015, was necessary. On January 9, 2015, Ms. Lara e-mailed the Complainant, advising that a sixth (6th) extension until January 30, 2015, was necessary.

October 7, 2014 OPRA request:

On October 7, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On October 8, 2014, the original Custodian responded in writing, advising that an extension of time until November 21, 2014, was necessary. On November 18, 2014, Ms. Lara e-mailed the Complainant, advising that a second (2nd) extension until December 5, 2014, was necessary for Finance to process the request. On December 5, 2014, Ms. Lara e-mailed the Complainant, advising that a third (3rd) extension until December 31, 2014, was necessary. On December 31, 2014, Ms. Lara e-mailed the Complainant, advising that a fourth (4th) extension of time until January 23, 2015, was necessary. On January 9, 2015, Ms. Lara e-mailed the Complainant, advising that a fifth (5th) extension until January 30, 2015, was necessary.

Denial of Access Complaint:

On January 12, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that he believed the City possessed all responsive records; yet, they failed to disclose same to date. The Complainant contended that the original Custodian unreasonably denied access to all responsive records and that the original Custodian’s actions represent a knowing and willful violation of OPRA.

The Complainant thus requested the GRC: 1) determine that the original Custodian unlawfully denied access to the responsive records, either within the statutorily mandated time frame or within the first extension of time; 2) order the original Custodian to disclose all responsive records; 3) order the original Custodian to produce a document index if he claimed that any records are exempt; 4) determine that the original Custodian knowingly and willfully

violated OPRA; 5) enjoin the original Custodian from committing future OPRA violations; and 6) order any further relief the GRC deems to be reasonable.

Statement of Information:

On February 13, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the original Custodian received the Complainant’s three (3) OPRA requests on May 27, September 22, and October 7, 2014, respectively. The Custodian certified that the City responded on multiple occasions, seeking extensions of time to comply with each OPRA request.⁵ The Custodian stated that he received notice of the instant complaint on January 12, 2015.

Additional Submissions:

On April 9, 2015, the Complainant submitted a letter brief, arguing that the “woefully incomplete” nature of the City’s SOI supported the Custodian’s continued knowing and willful violation of OPRA. The Complainant asserted that the Custodian failed to provide evidence regarding the City’s search for responsive records.

The Complainant requested that the Council take judicial notice of filings in Christian v. City of Newark (Essex), GRC Complaint No. 2014-307 (November 2014), in which the City conducted a search of Finance records and located those responsive to the OPRA request.⁶ The Complainant also requested that the GRC require the Custodian to provide a certification detailing the search conducted to locate records responsive to all three (3) OPRA requests, as well as an itemized list of all records responsive to them.

Analysis

Timeliness

May 27, 2014, OPRA request:

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

⁵ The Custodian certified that “the request was sent to the Police Department and no records were found.” The Custodian also argued that the requested records are Court documents. That argument appears to be in error, given that the City provided records to the Complainant on June 11, 2014, and sought several extensions to obtain records from Finance.

⁶ The GRC notes that the complainant in that matter voluntarily withdrew the complaint from consideration.

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.

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).

Regarding the May 27, 2014, OPRA request, the Custodian certified in the SOI that the original Custodian received it on that day. However, the Custodian also certified that the City did not respond (by partially disclosing records) until June 11, 2014, or eleven (11) business days after receipt of the request. Accordingly, the evidence of record supports that the original Custodian failed to respond timely to the request.⁸

Therefore, the original Custodian did not bear his burden of proof that he timely responded to the Complainant's May 27, 2014, OPRA request. N.J.S.A. 47:1A-6. As such, the original 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.

September 22, and October 7, 2014 OPRA requests:

OPRA also provides that a custodian may request an extension of time to respond to the complainant's OPRA request but must provide a specific date on which he/she will respond. N.J.S.A. 47:1A-5(i). OPRA also provides that should the custodian fail to provide a response on that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i).

In Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant's request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated deadline date when the requested records would be made available. The complainant did not agree to the custodian's request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that "because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i)."

⁸ Because the original Custodian's response ultimately resulted in a "deemed" denial, the GRC declines to address the sufficiency of the Custodian's response on June 11, 2014.

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant’s OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time [to a specific date] to respond to the Complainant’s OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Moreover, in Werner v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012), the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant’s OPRA request. The Council concluded that because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days, and provided an anticipated deadline date when the requested records would be made available, the Custodian properly requested the extension pursuant to OPRA. In rendering the decision, the Council cited as legal authority Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O’Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); and Starkey v. NJ Dep’t of Transportation, GRC Complaint Nos. 2007-315 through 317 (February 2009).

This is not to say that the Council will unquestioningly find valid every request for an extension of time containing a date certain deadline. In Ciccarone v. NJ Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014), the Council found that notwithstanding the fact that extensions are rooted in well-settled case law, the custodian could not exploit same to deny access continuously by repeatedly rolling over an extension once it is obtained. In reaching their conclusion that the continuous extensions resulted in a “deemed” denial of access, the Council looked to what is “reasonably necessary.”

In the instant matter, the City sought multiple extensions for both the Complainant’s September 22, and October 7, 2014, OPRA requests as follows:

OPRA Request Date	Date of Request for Extension	New Deadline for Response	Reason for Extension
September 22, 2014	September 23, 2014	October 24, 2014	None
	October 28, 2014	November 21, 2014	Gathering records
	November 18, 2014	December 5, 2014	“[S]till processing”
	December 5, 2014	December 31, 2014	Finance “still processing”
	December 31, 2014	January 23, 2015	“has not received the responses,” presumably from Finance

	January 9, 2015	January 30, 2015	Finance “still processing”
October 8, 2014	October 8, 2014	November 21, 2014	Finance processing request
	November 18, 2014	December 5, 2014	“[S]till processing”
	December 5, 2014	December 31, 2014	Finance “still processing”
	December 31, 2014	January 23, 2015	“has not received the responses” presumably from Finance
	January 9, 2015	January 30, 2015	Finance “still processing”

Both OPRA requests sought records related to two (2) checks written by the City. The City, through Ms. Lara, continuously extended the deadline for response by eighty-six (86) and sixty-four (64) business days, respectively (loosely accounting for holidays). As noted above, although a requestor’s approval is not required for a valid extension, the GRC notes that it is unclear whether the Complainant agreed with same prior to filing the instant complaint because neither party included correspondence indicating that the Complainant acquiesced to the extensions.⁹

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. The GRC must next consider the amount of time the custodian already had to respond to the request. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian’s ability to effectively respond to the request.¹⁰

The evidence of record does indicate that, at a base level, both the original Custodian and subsequently the current Custodian were working with Finance to respond to the requests. However, neither the Custodian nor anyone associated with the search for responsive records provided as part of the SOI a certification recounting the nature of the search required to locate same. Without the benefit of a document index, the GRC cannot determine whether a minimal or significant amount of records would have results. However, it should be noted that the September 22, 2014, OPRA request would have yielded at least one (1) record.

From the original Custodian’s receipt of the OPRA requests, he immediately sought a twenty-three (23) and thirty (30) business day extension, respectively. The original Custodian had nearly a month of business days to respond both requests due to the first extension. However, the original Custodian, through Ms. Lara, continued to extended the time frame an additional sixty-three (63) and thirty-four (34) business days, respectively. Ms. Lara also

⁹ In Ciccarone, the complainant allowed for a few extensions before denying the custodian any additional time. Although the complainant’s acquiescence to extensions was a mitigating factor there, it was not the only factor on which the GRC relied to determine whether the requests for extension were reasonable.

¹⁰ “Extenuating circumstances” could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency’s need to reallocate resources to a higher priority due to *force majeure*.

provided only vague reasons for the extensions; thus, the record does not support that the City was engaged in particularly harmful extenuating circumstances that would have warranted such an extensive delay. Based on the evidence of record, extending the response time for the OPRA requests beyond the initial extension of time is clearly excessive and flies in the face of OPRA's mandate to ". . . promptly comply . . ." with a records request and to grant or deny access ". . . as soon as possible . . ." N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Accordingly, the original Custodian did not bear his burden of proof that he timely responded to the Complainant's September 22, and October 8, 2014 OPRA requests based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6. As such, the original Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).

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.

In the matter currently before the Council, to date, the City has only disclosed records responsive to one (1) of the twenty (20) checks identified in the Complainant's May 27, 2015, OPRA request. Otherwise, the Custodian has not provided to the Complainant any additional records or argued that same were exempt. The Custodian also failed to address in the SOI the search undertaken as well as Finance's role in attempting to locate and provide records. Based on the forgoing, the GRC is not satisfied that the City met its obligation of appropriately fulfilling the Complainant's three (3) OPRA requests.

Accordingly, the Custodian and/or individuals within the City, to include those working on the Complainant's three (3) OPRA requests within Finance, may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian and/or individuals from Finance that conducted the search must locate and provide any remaining records responsive to the Complainant's three (3) OPRA requests. However, if the Custodian and Finance determine, following an appropriate search, that no responsive records exist, the Custodian and/or individuals from Finance must certify to that fact. Moreover, the Custodian and/or individuals from Finance must provide a detailed explanation of the search conducted to locate all records responsive to the OPRA requests.

Knowing & Willful

The Council defers analysis of whether the Custodian or any other employee of the City knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The original Custodian did not bear his burden of proof that he timely responded to the Complainant's May 27, 2014, OPRA request. N.J.S.A. 47:1A-6. As such, the original 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).
2. The original Custodian did not bear his burden of proof that he timely responded to the Complainant's September 22, and October 8, 2014, OPRA requests based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6. As such, the original Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
3. The Custodian or individuals within the City of Newark, to include those working on the Complainant's three (3) OPRA requests within the Department of Finance, may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian and/or individuals from the Department of Finance that conducted the search must locate and provide any remaining records responsive to the Complainant's three (3) OPRA requests. However, if the Custodian and Finance determine, following an appropriate search, that no responsive records exist, the Custodian and/or individuals from Finance must certify to that fact. Moreover, the Custodian and/or individuals from the Department of Finance must provide a detailed explanation of the search conducted to locate all records responsive to the OPRA requests.
4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions (if necessary), including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹¹ to the Executive Director.¹²**

¹¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If the Complainant incurred a copying or special service charge, the Custodian must certify that the record has been *made available* to the Complainant, but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

5. The Council defers analysis of whether the Custodian or any other employee of the City knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover
Executive Director

November 10, 2015¹³

¹³ This complaint was prepared for adjudication at the Council's November 17, 2015, meeting, but could not be adjudicated due to lack of quorum.