



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

January 31, 2017 Government Records Council Meeting

Terri L. Howell
Complainant

Complaint No. 2015-194

v.

Greenwich Township (Warren)
Custodian of Record

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the December 6, 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 the complaint because the Complainant, as referenced in a September 14, 2016 letter to Administrative Law Judge Michael Antoniewicz, withdrew the complaint on the basis that the parties agreed to settle the matter. No further adjudication is therefore 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 31st Day of January, 2017

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: February 3, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 31, 2017 Council Meeting**

**Terri L. Howell¹
Complainant**

GRC Complaint No. 2015-194

v.

**Greenwich Township (Warren)²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all signed resolutions or ordinances regarding Greenwich Township personnel policies and procedures manual 2005- April 2015
2. Copy of Resolution and Ordinance Establishing Health Insurance Policy or Benefits with State of New Jersey (1992-2004)
3. Copy of Resolution and Ordinance – N.J.S.A. 52:15-17.38, Chapter 88 and/or Chapter 48 – Retiree Benefits

Custodian of Record: Kim Viscomi
Request Received by Custodian: June 5, 2015
Response Made by Custodian: None
GRC Complaint Received: June 23, 2015

Background

April 26, 2016 Council Meeting:

At its April 26, 2016 public meeting, the Council considered the March 22, 2016 Supplemental 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, found that:

1. The Complainant asserted that she did not receive a response to her requests. Therefore, the Custodian’s failure to respond timely in writing results in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian did not comply with the GRC’s initial request for a Statement of Information. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian by sending a “No

¹ No legal representation listed on record.

² Represented by Michael B. Lavery, Esq. (Morristown, NJ).

Defense” letter and requesting from the Custodian a completed SOI within three (3) business days of receipt. The GRC has yet to receive a completed SOI from either the Custodian or her Counsel. The Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian...” N.J.S.A. 47:1A-7(b).

3. Based on the “deemed” denial and the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. As such, this complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On April 28, 2016, the Council distributed its Interim Order to all parties. On July 1, 2016, the GRC transmitted the complaint to the Office of Administrative Law (“OAL”).

On September 14, 2016, the Custodian’s Counsel sent a letter to the Honorable Michael Antoniewicz, Administrative Law Judge (“ALJ”), advising that the parties had fully resolved the dispute. The Custodian’s Counsel noted that he had spoken to the Complainant, and both parties “agreed” that the action may be dismissed. Following receipt of the Custodian’s Counsel’s letter, the ALJ’s Judicial Assistant returned the matter to the OAL Clerk’s office on September 16, 2016, indicating that the case was withdrawn. The OAL Clerk’s Office marked the case as withdrawn and returned it to the GRC on October 21, 2016.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council dismiss the complaint because the Complainant, as referenced in a September 14, 2016 letter to Administrative Law Judge Michael Antoniewicz, withdrew the complaint on the basis that the parties agreed to settle the matter. No further adjudication is therefore required.

Prepared By: Husna Kazmir
Staff Attorney

December 6, 2016³

³ This complaint was prepared for adjudication at the Council’s December 13, 2016 meeting but could not be adjudicated due to lack of quorum.



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PO Box 819
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CHRIS CHRISTIE
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Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

April 26, 2016 Government Records Council Meeting

Terri L. Howell
Complainant

Complaint No. 2015-194

v.

Greenwich Township (Warren)
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 2016 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 Complainant asserted that she did not receive a response to her requests. Therefore, the Custodian’s failure to respond timely in writing results in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian did not comply with the GRC’s initial request for a Statement of Information. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian by sending a “No Defense” letter and requesting from the Custodian a completed SOI within three (3) business days of receipt. The GRC has yet to receive a completed SOI from either the Custodian or her Counsel. The Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian...” N.J.S.A. 47:1A-7(b).
3. Based on the “deemed” denial and the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. As such, this complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.



Interim Order Rendered by the
Government Records Council
On The 26th Day of April, 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: April 28, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting**

**Terri L. Howell¹
Complainant**

GRC Complaint No. 2015-194

v.

**Greenwich Township (Warren)²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all signed resolutions or ordinances regarding Greenwich Township personnel policies and procedures manual 2005- April 2015
2. Copy of Resolution and Ordinance Establishing Health Insurance Policy or Benefits with State of New Jersey (1992-2004)
3. Copy of Resolution and Ordinance – N.J.S.A. 52:15-17.38, Chapter 88 and/or Chapter 48 – Retiree Benefits

Custodian of Record: Kim Viscomi

Request Received by Custodian: June 5, 2015

Response Made by Custodian: None

GRC Complaint Received: June 23, 2015

Background³

Request and Response:

On June 5, 2015, the Complainant submitted three individual Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. The Custodian did not respond.

Denial of Access Complaint:

On June 23, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant made no additional legal arguments, other than noting she received no response to her requests.

¹ No legal representation listed on record.

² Represented by Francesco Taddeo, Esq. (Somerville, 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.

Statement of Information:

On July 1, 2015, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. The Custodian failed to comply with the GRC’s initial request for a Statement of Information. After failing to respond within the provided five (5) business days, the GRC sent a “No Defense” letter to the Custodian on July 13, 2015, requesting a completed SOI within three (3) business days of receipt. To date, the GRC has not received a response from either the Custodian or Mr. Taddeo, her counsel of record.

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).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 October 31, 2007).

Additionally, OPRA provides that:

If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.

N.J.S.A. 47:1A-5(i).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant’s March 19, 2007 OPRA request, seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and

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.

N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated . . . the Custodian violated N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of access to the records.

Id.

Unlike in Kohn, where the Custodian timely responded to the initial OPRA request, the Complainant in the instant matter asserted that the Custodian never did respond at all. Moreover, the Custodian offers no evidence to refute the Complainant’s assertion. Therefore, the Custodian’s failure to respond timely in writing results in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn, GRC 2007-124.

Failure to Submit SOI

In crafting OPRA, the Legislature defined the GRC’s authority, which includes a statutory mandate to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian.” N.J.S.A. 47:1A-7(b). To carry out those duties, the GRC promulgated regulations requiring that custodians “shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a). The GRC further requires that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

N.J.A.C. 5:105-2.4(f).

Finally, the GRC’s regulations provide that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a).

In the instant matter, the Custodian did not comply with the GRC’s initial request for a Statement of Information. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian by sending a “No Defense” letter and requesting from the Custodian a completed SOI within three (3) business days of receipt. The GRC has yet to receive a completed SOI from either the Custodian or her Counsel. The Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a

complaint filed by any person concerning a denial of access to a government record by a records custodian...” N.J.S.A. 47:1A-7(b).

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.

Here, the Complainant asserts that she received no response from the Custodian regarding her OPRA requests. The Custodian’s failure to respond results in a “deemed” denial of the OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). In addition, the Custodian failed to submit an SOI to the GRC, despite repeated attempts to contact her. Because the Custodian refused to complete the GRC’s required SOI, the GRC does not have an unequivocal record on which to rely in adjudicating this complaint.

Therefore, based on the “deemed” denial and the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. As such, this complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant asserted that she did not receive a response to her requests. Therefore, the Custodian’s failure to respond timely in writing results in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian did not comply with the GRC’s initial request for a Statement of Information. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian by sending a “No Defense” letter and requesting from the Custodian a completed SOI within three (3) business days of receipt. The GRC has yet to receive a completed SOI from either the Custodian or her Counsel. The Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian...” N.J.S.A. 47:1A-7(b).

3. Based on the “deemed” denial and the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. As such, this complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Husna Kazmir
Staff Attorney

March 22, 2016⁵

⁵ This complaint could not be adjudicated at the Council’s March 29, 2016 meeting due to lack of a quorum.