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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Louis Hall
Complainant
v.
Borough of Glassboro (Gloucester)
Custodian of Record

Complaint No. 2016-260

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 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 has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The evidence in the record indicates that the Custodian responded in writing within the statutorily mandated seven (7) business days. Therefore, there was no "deemed" denial of access. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).

2. Because the Custodian timely provided the Complainant all responsive records on August 16, 2016, and because there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has met her burden of proving that there was no unlawful denial of access. N.J.S.A. 47:1A-6; Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011). See also Demitroff v. Buena Vista Twp. (Atlantic), GRC Complaint No. 2014-184 (January 2015).

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 18th Day of December, 2018

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 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Louis Hall[1] **GRC Complaint No. 2016-260**
Complainant

v.

Borough of Glassboro (Gloucester)[2]
Custodial Agency

Records Relevant to Complaint: "Any and all documents, studies, reports, memoranda, RFPs, RFQs, letters, emails, etc. from January 1, 2015 through and including April 1, 2016 regarding or related to a proposal or intent to reduce, replace, transfer and/or eliminate the services currently being provided by the Rowan University Police Department."

Custodian of Record: Patricia A. Frontino
Request Received by Custodian: August 12, 2016
Response Made by Custodian: August 16, 2016
GRC Complaint Received: September 19, 2016

Background[3]

Request and Response:

On August 12, 2016, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. As of the date of the complaint, no response has been made by the Custodian.

Denial of Access Complaint:

On September 19, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he submitted his OPRA request on August 12, 2016, but never received a response from the Custodian.

Statement of Information:

On October 4, 2016, the Custodian filed a Statement of Information ("SOI"). The

[1] No legal representation listed on record.
[2] Represented by Timothy D. Scaffifi, Esq., of the Law Office of Timothy D. Scaffidi (Woodbury, N.J.).
[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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Custodian certified that she received the Complainant's OPRA request on August 12, 2016. The Custodian certified that this was the Complainant's second request for such records, and the first was the subject of a previous GRC complaint (2016-145) that had since been withdrawn. The Custodian's certified that her search consisted of providing the same records that were provided on the first request, asserting that there was no substantive difference between the two requests. The Custodian certified that she responded in writing on August 16, 2016, providing five (5) records entitled, "Public Notice", "RFQ due date", "RFP/RFQ Opening sheet", "BlueShield response to RFQ", and "Matrix response to RFQ".

The Custodian asserted that, contrary to the Complainant's assertion, a response was provided on August 16, 2016, the second business day after receipt of the request. The Custodian asserted that all of the records identified under Item No. 9 of the SOI were provided in unredacted form.

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).

The Complainant asserted that he did not receive a response from the Custodian regarding his OPRA request. However, the evidence in the record demonstrates that the Custodian received the OPRA request on August 12, 2016, and responded on August 16, 2016. The Custodian included a copy of the cover letter sent to the Complainant dated August 16, 2016. Additionally, the copy of the Complainant's OPRA request provided with the response includes the Custodian's signature, also dated August 16, 2016.

Therefore, the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The evidence in the record indicates that the Custodian responded in writing within the statutorily mandated seven (7) business days. Therefore, there was no "deemed" denial of access. N.J.S.A. 47:1A-5(g), 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

[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.

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 Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the custodian certified that the record provided to the complainant was the only record responsive to the request. Id. The Council found that there had thus been no unlawful denial of access. Id. See also Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011) (holding custodian did not unlawfully deny access when he certified that he provided all responsive records to complainant, and there existed no credible evidence in record to refute such certification).

As determined above, the Custodian timely responded to the Complainant's OPRA request, providing five (5) records on August 16, 2016. To date, there has not been a response from the Complainant as to the Custodian's claim that a response was provided, nor any objection as to the responsive records themselves.

Therefore, because the Custodian timely provided the Complainant all responsive records on August 16, 2016, and because there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has met her burden of proving that there was no unlawful denial of access. N.J.S.A. 47:1A-6; Burns, GRC 2005-68; Kohn, GRC 2009-203 *et seq*. See also Demitroff v. Buena Vista Twp. (Atlantic), GRC Complaint No. 2014-184 (January 2015).

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The evidence in the record indicates that the Custodian responded in writing within the statutorily mandated seven (7) business days. Therefore, there was no "deemed" denial of access. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).

2. Because the Custodian timely provided the Complainant all responsive records on August 16, 2016, and because there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has met her burden of proving that there was no unlawful denial of access. N.J.S.A. 47:1A-6; Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011). See also Demitroff v. Buena Vista Twp. (Atlantic), GRC Complaint No. 2014-184 (January 2015).

Prepared By: Samuel A. Rosado
Staff Attorney

December 11, 2018