



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**

**April 30, 2019 Government Records Council Meeting**

Michael I. Inzelbuch, Esq.  
Complainant

Complaint No. 2017-22

v.

NJ Office of Administrative Law  
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council (“Council”) considered the April 23, 2019 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 the Custodian has borne his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, no “deemed” denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Werner v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 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 30<sup>th</sup> Day of April 2019

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: May 3, 2019**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
April 30, 2019 Council Meeting**

**Michael I. Inzelbuch, Esq.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-22**

v.

**N.J. Office of Administrative Law<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies of:

1. Date of appointment to the Office of Administrative Law (“OAL”) of Administrative Law Judge (“ALJ”) Crowley and any and all documentation submitted to OAL as to her appointment
2. Dates of any and all trainings ALJ Crowley received at OAL and proof of attendance
3. Any and all schedules of: hearings, conversations, time expended by ALJ Sarah G. Crowley as to the following matters
  - a. EDS-12320-16-LD and ED o/b/o ED v. Toms River BOE
  - b. EDS-13775-16-RR and MK o/b/o R v. Jackson BOE
  - c. EDS-13091-16-JJ and RJ o/b/o MJ v. Lakewood BOE
  - d. EDS-011780-16-HM and BM o/b/o AM v. Lakewood BOE
4. Any and all notes maintained by ALJ Crowley as to the above matters
5. Any and all correspondence, e-mails, memorandum, etc. written by ALJ Crowley as to the above matters to anyone
6. Same as #5 but received by ALJ Crowley
7. Any and all e-mails, notes, memorandum, documentation, etc. received by ALJ Crowley from Maria Elisa Lugo
8. Same as #7 but written by ALJ Crowley to Marisa Elisa Lugo
9. Same as #7 and #8 but as to Marianne Hatrack
10. Same as #7 and #8 but as to ALJ Delanoy
11. Same as #7 and #8 but as to ALJ Sanders
12. Same as #7 and #8 but as to ALJ Beavers
13. Same as #3 but as to schedules of ALJ Beavers, ALJ Sanders, ALJ Delanoy
14. As to any and all sensitivity, race, diversity trainings offered to ALJs since ALJ Crowley’s appointment – dates, documentation as to same, attendance records
15. Any and all documentation as to OAL policy(ies) and/or guidelines/etc. as how conference calls are to be scheduled as to pending matters with parties and/or their counsel (effective since May 2016 to current)
16. Same as #15 but as to how Hearings are to be scheduled by ALJs

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Aziz O. Nekoukar.

17. Same as #15 but the procedure to be utilized when a party requests that conference calls with ALJ be on the record
18. Same as #15 but the procedure to be utilized when there are discovery issues
19. Same as #15 but the procedure to be utilized when an ALJ requests to be recused
20. Same as #15 but the procedure to be utilized when a party requests that an ALJ be recused
21. As the cases listed above (#3) documentation evidencing the procedural history of said cases
22. Same as #15 but as to the calculation of federal days to wit, the amount of time required by law to have hearings on special education matters
23. Any and all documentation that Acting Director Sanders Sept. 22, 2014 Memo (see attached – 3 pages) was complied with by ALJ Crowley as to the above-referenced matters (see #3)
24. Any and all communications between OSEP and OAL as to special education cases being heard (or not being heard) as required by law in the time frames required
25. Any and all e-mails authored or received by ALK Crowley as to Michael Inzelbuch since her appointment

**Custodian of Record:** Patrick Mulligan

**Request Received by Custodian:** December 22, 2016

**Response Made by Custodian:** January 3, 2017

**GRC Complaint Received:** February 2, 2017

### **Background**<sup>3</sup>

#### **Request and Response:**

On December 22, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 3, 2017, the sixth (6<sup>th</sup>) business day after receipt, the Custodian responded in writing, stating that an extension of time of approximately forty-five (45) to sixty (60) days was required to fulfill the request.

#### **Denial of Access Complaint:**

On February 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted an OPRA request to OAL on December 22, 2016 and never received a response.

#### **Statement of Information:**

On March 17, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 22, 2016. The Custodian certified that his search included searching within OAL’s electronic files and databases as well as OAL’s e-mail server, which was maintained by the New Jersey Office of Information Technology.

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<sup>3</sup> 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.

The Custodian certified that he initially responded in writing on January 3, 2017 seeking an extension through March 31, 2017 due to limited staff resources, as well as the breadth and complexity of the request. The Custodian provided a copy of the initial response in his SOI.

The Custodian certified that he provided his complete response to the Complainant concurrently with his SOI. The Custodian certified that the response consisted of forty-five (45) pages of responsive records sent via e-mail, and 931 pages sent via UPS overnight delivery.

The Custodian certified that the extension was necessary in part due to the breadth of the request. The Custodian asserted that the request had twenty-five (25) separate categories, many of which included sub-categories. The Custodian asserted that the request included e-mails, notes, and correspondence pertaining to multiple OAL cases, e-mails from several different ALJs, training materials, and guidelines for ALJs.

The Custodian asserted that because the response was provided within extended time frame, he has fully complied with his obligations under OPRA, and the matter should be dismissed.

#### Additional Submissions:

On March 19, 2017, the Complainant e-mailed the GRC demanding that the Custodian provide a copy of the certified mailing signed by the Complainant and/or e-mail that was sent to him on January 3, 2017. The Complainant also requested a description of the OAL's mailing process, asserting that this was not the first instance where the Complainant did not receive documents that were allegedly sent by the OAL.

The Complainant also asserted that when he requested a status update from the Custodian on February 2, 2017, he received an automatic reply that stated that the Custodian was serving jury duty and would get back to him when he returned.

On April 4, 2017, the Complainant sent additional correspondence to the GRC, formally rejecting the Custodian's claim that an initial response was sent to him on January 3, 2017. The Complainant reiterated his request for an executed copy of the certified mailing receipt.

### 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).<sup>4</sup> Thus, a custodian's failure to respond in writing to a complainant's OPRA

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<sup>4</sup> 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.

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).

In Werner v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012), the Council 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 date by which the requested records would be made available, the custodian properly requested the extension pursuant to OPRA. See also 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); and Starkey v. N.J. Dep’t of Transp., GRC Complaint Nos. 2007-315 through 317 (February 2009).

Here, the Custodian certified that he sent an initial response to the Complainant on January 3, 2017, the sixth (6<sup>th</sup>) business day following receipt of the request. Therein, the Custodian sought an additional sixty (60) business days to fully respond to the Complainant’s request. Although the Complainant contended that he did not receive the response, the Custodian provided a copy of the letter dated January 3, 2017, and a copy of the certified mail receipt attached to the envelope. Thus, the Custodian provided sufficient evidence to show that he timely responded to the Complainant with his requesting of a time extension.

Therefore, the Custodian has borne his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, no “deemed” denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Werner, GRC 2011-151.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that the Custodian has borne his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, no “deemed” denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Werner v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012).

Prepared By: Samuel A. Rosado  
Staff Attorney

April 23, 2019