



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**December 15, 2020 Government Records Council Meeting**

Frank J. Festa, Jr.  
Complainant

Complaint No. 2019-187

v.

Township of Marlboro (Monmouth)  
Custodian of Record

At the December 15, 2020 public meeting, the Government Records Council (“Council”) considered the December 8, 2020 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 Complainant’s cause of action was not ripe at the time of the filing of this Denial of Access Complaint: the Custodian had not denied access to any records responsive to the OPRA request. Specifically, the Custodian sought a proper extension on the same business day as receipt of the subject OPRA request; however, the Complainant verified his complaint on the sixth (6) business day after receipt of the OPRA request. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. See 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 15<sup>th</sup> Day of December 2020

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 17, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 15, 2020 Council Meeting**

**Frank J. Festa, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-187**

v.

**Township of Marlboro (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of invoices to the Township of Marlboro (“Township”) from Rainone, Coughlin, Minchello, LLC. (“Firm”) requesting payment for services rendered from January 1, 2019 to present.

**Custodian of Record:** Suzanne Branagan  
**Request Received by Custodian:** August 15, 2019  
**Response Made by Custodian:** August 15, 2019  
**GRC Complaint Received:** September 3, 2019<sup>3</sup>

**Background<sup>4</sup>**

**Request and Response:**

On August 13, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 15, 2019, the same business day as receipt of the OPRA request, the Custodian responded in writing advising that an extension until September 24, 2019 was necessary to respond to the subject OPRA request. The Custodian asked that the Complainant confirm receipt of her response.

**Denial of Access Complaint:**

On September 3, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to his OPRA request.

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

<sup>2</sup> Represented by Brian P. Trelease, Esq., of Rainone, Coughlin, Minchello, LLC (Iselin, NJ).

<sup>3</sup> The Complainant initially faxed his complaint on August 23, 2019. However, same was returned as incomplete. The Complainant refaxed a complete copy of his complaint on September 3, 2019.

<sup>4</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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

### Supplemental Response:

On September 24, 2019, the Custodian responded in writing extending the response time to October 3, 2019 to fulfill the request. On October 3, 2019, the Custodian disclosed redacted invoices to the Complainant in three (3) separate e-mails.

### Statement of Information:

On November 4, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 15, 2019. The Custodian certified that she responded in writing on the same day extending the time frame through September 24, 2019 to respond to the request. The Custodian affirmed that she subsequently responded in writing extending the time frame a second time through October 3, 2019. The Custodian certified that she disclosed the responsive invoices on October 3, 2019.

The Custodian stated that OPRA “only allows requests for records, not requests for information.” MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian further contended that the OPRA response time frame did not apply where requests failed to identify specific records. N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).

The Custodian argued that this complaint should be dismissed as premature and frivolous. The Custodian argued that the evidence of record supports that she immediately responded in writing extending the response time frame; yet, the Complainant filed the instant complaint “prior to the due date of the OPRA request at issue.” The Custodian argued that the Complainant pursued this action with intent to harass the Township. The Custodian thus contended that this complaint was frivolous and must be dismissed.

### Additional Submissions:

On October 28, 2019, the Complainant e-mailed the GRC alleging several communication issues with the Township. The Complainant asserted that the Township was not assisting him to locate specific records and instead denied his OPRA requests as invalid.<sup>5</sup>

## Analysis

### Unripe Cause of Action

OPRA provides that “a custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than *seven business days after receiving the request . . .*” N.J.S.A. 47:1A-5(i) (emphasis added). OPRA further states that “[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian’s decision by filing . . . a complaint with the Government Records Council . . .” N.J.S.A. 47:1A-6.

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<sup>5</sup> The Complainant’s e-mail was sent in relation to each of his ten (10) complaints being concurrently adjudicated.

In Sallie v. N.J. Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009), the complainant forwarded a complaint to the GRC asserting that he had not received a response from the custodian and seven (7) business days would have passed by the time the GRC received the Denial of Access Complaint. The custodian argued in the SOI that the complainant filed the complaint prior to the expiration of the statutorily mandated seven (7) business day time frame set forth in N.J.S.A. 47:1A-5(i). The Council held that:

[B]ecause the Complainant's cause of action was not ripe at the time he verified his Denial of Access Complaint; to wit, the Custodian had not at that time denied the Complainant access to a government record, the complaint is materially defective and therefore should be dismissed.

In Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), after determining that the custodian's extension was proper, the Council addressed whether the complainant's request was ripe for adjudication. Looking to its prior decision in Sallie, GRC 2007-226, the Council held that "the instant complaint is materially defective and should therefore be dismissed." In reaching this conclusion, the Council reasoned that:

[T]he Custodian had not denied access . . . because the Custodian responded to the Complainant's OPRA request within the statutorily mandated seven (7) business days . . . requesting an additional seven (7) business days to respond to the OPRA request. Thus, the extended . . . time frame . . . had not expired at the time the Denial of Access Complaint was filed . . .

[Id. at 9. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).<sup>6</sup>]

Here, the Custodian received the Complainant's OPRA request on August 15, 2019 and immediately responded in writing extending the time frame through September 24, 2019. However, the Complainant verified and faxed the instant complaint to the GRC on August 23, 2019, the sixth (6<sup>th</sup>) business day after receipt of the subject OPRA request, arguing that he did not receive a response. The Custodian certified to her actions in the SOI and attached supporting documentation.

The facts in the instant matter are like those in Werner, GRC 2011-151. Specifically, the Custodian timely and properly obtained an extension of time to the Complainant's OPRA request, which sought "immediate access" items. N.J.S.A. 47:1A-5(e). However, the Complainant verified the instant complaint five (5) business days later and in the midst of the extension. It is thus clear that the complaint was not ripe for adjudication at the time it was filed with the GRC.

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<sup>6</sup> Prior to the Council's decision in Ciccarone v. NJ Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014), the Council would adjudicate complaints like the current matter by administrative disposition. However, it should also be noted that the GRC will not apply Ciccarone here because the Complainant filed his complaint within seven (7) business days of the Custodian's receipt of the subject OPRA request and immediate response.

Accordingly, the Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint: the Custodian had not denied access to any records responsive to the OPRA request. Specifically, the Custodian sought a proper extension on the same business day as receipt of the subject OPRA request; however, the Complainant verified his complaint on the sixth (6) business day after receipt of the OPRA request. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. See N.J.S.A. 47:1A-5(i); Werner, GRC 2011-151.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint: the Custodian had not denied access to any records responsive to the OPRA request. Specifically, the Custodian sought a proper extension on the same business day as receipt of the subject OPRA request; however, the Complainant verified his complaint on the sixth (6) business day after receipt of the OPRA request. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. See 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: Frank F. Caruso  
Executive Director

December 8, 2020