



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 18, 2021 Government Records Council Meeting

Juan Mendoza
Complainant

Complaint No. 2019-208

v.

City of Jersey City (Hudson)
Custodian of Record

At the May 18, 2021 public meeting, the Government Records Council (“Council”) considered the May 11, 2021 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 notwithstanding the Custodian’s certification that he disclosed all responsive non-exempt records to the Complainant, this complaint is materially defective and shall be dismissed because the record is not an immediate access record and because the Complainant verified his complaint before the statutory time period provided for the Custodian to respond, as extended, had expired. See Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013) and Jean-Paul v. City of Jersey City (Hudson), GRC Complaint No. 2020-227 (December 2020). See also Smith v. Moorestown Twp., 2020 N.J. Super. Unpub. LEXIS 1108 (App. Div. June 10, 2020).

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 May 2021

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 20, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 18, 2021 Council Meeting**

**Juan Mendoza¹
Complainant**

GRC Complaint No. 2019-208

v.

**City of Jersey City (Hudson)²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all body camera video recorded between 5:30 p.m. to 8:00 p.m. from the initial car and all responding units to the report of a harassment which occurred on August 29, 2021 at approximately 6:01 p.m. Jersey City Police, Unit East 503 Officers P. Thomas and J. Martinez responded to the location.
2. Copies of any security video obtained from 451 Communipaw Avenue, Jersey City (The Factory) from the above dated incident.³

Custodian of Record: Sean Gallagher

Request Received by Custodian: September 6, 2019

Response Made by Custodian: September 17, 2019, October 1, 2019 and October 9, 2019

GRC Complaint Received: October 9, 2019

Background⁴

Request and Responses:

On September 6, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 17, 2019, the seventh (7th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that “two additional weeks are needed for the processing of your request.” Therefore, the Custodian’s extension of time would have expired on October 1, 2019.

¹ No legal representation listed on record.

² Represented by Jeremy Jacobsen, Esq. (Jersey City, NJ).

³ The Complainant did not specify a preferred delivery method.

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.

On October 1, 2019, the Custodian responded in writing informing the Complainant that “two additional weeks are needed for the processing of your request.” Therefore, the Custodian’s extension of time would have expired on October 15, 2019. On October 1, 2019, the Complainant sent correspondence to the Custodian to remind him that it had been almost a month since he filed his request. On October 2, 2019, the Complainant requested an approximate date the request would be done.

On October 9, 2019, the Custodian disclosed to the Complainant the records responsive to request item number 1 via a link to the Jersey City OPRA Center. The Custodian informed the Complainant that redactions were made to the responsive record to remove a driver’s license number and a personal telephone number pursuant to N.J.S.A. 47:1A-1. The Custodian informed the Complainant that there are no records responsive to request item number 2.

Denial of Access Complaint:

On October 9, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted his OPRA request on September 6, 2019, and Amanda Bransky, on behalf of the Custodian, responded on September 17, 2019 via the OPRA Portal requesting a two-week extension of time. The Complainant stated that he replied “OK.”

The Complainant stated that on September 25, 2019, and again on October 1, 2019, he requested the status of his request. The Complainant stated that on October 1, 2019, he received a second request from Amanda Bransky, on behalf of the Custodian, for an additional two-week extension of time. The Complainant stated that on October 2, 2019, he requested an approximate date the request would be done. The Complainant further stated that on October 9, 2019, he requested the status of the records, and having received no reply for two minutes; he called the Clerk’s office and spoke to the Clerk’s secretary. The Complainant stated that the Clerk’s secretary told him the Clerk was too busy to speak with him at that time. The Complainant stated that because it had been over a month since he submitted his OPRA request, he filed the within complaint.⁵

Additional Submissions:

On October 22, 2019, the Complainant e-mailed the GRC and stated that he received a redacted video from the Custodian and that additional items are being withheld. The Complainant stated that he filed another more specific OPRA request and it was denied. The Complainant attached an OPRA request he submitted to the City of Jersey City on October 16, 2019 with related documentation.

On October 24, 2019, the GRC e-mailed the Complainant and informed him that the GRC does not know what additional items may have been withheld because he did not provide a description of the items. The GRC informed the Complainant that that only items in the request that formed the basis of the instant complaint were the BWC video and the security video. The

⁵ Most of the parties’ communications were via the Jersey City OPRA Center; however, there is no documentation supporting some of the alleged communications.

GRC further informed the Complainant that there may be a reason for redactions in the video; however, the agency had not yet submitted their SOI in which the Custodian is asked to certify as to the reason for any redactions. The GRC also advised the Complainant that if he submitted another more specific request and he believes it was unlawfully denied, he would have to file another complaint.

Statement of Information:

On November 1, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 6, 2019, and initially responded in writing on September 17, 2019, seeking a two-week extension of time. The Custodian certified that the extension of time was necessary because he had to seek guidance from the Hudson County Prosecutor’s Office to ensure production of the requested records would not interfere with an ongoing investigation pursuant to the Attorney General’s Law Enforcement Directive No. 2015-1 regarding Police Body Worn Cameras (“BWCs”) and Stored BWC Recordings. The Custodian certified that he did not receive guidance from the Prosecutor’s Office during the first two-week extension of time, and for that reason he requested a second two week extension of time.

The Custodian certified that Sergeant Michael Johns searched for the requested video footage and located such footage from only one (1) BWC which was worn by Officer J. Martinez. The Custodian further certified that the responsive BWC record was disclosed to the Complainant on October 9, 2019. The Custodian certified that the disclosed record contained minor redactions to remove a license and audio segment revealing a personal telephone number. The Custodian certified that Sergeant Johns stated that the City of Jersey City does not have BWC footage from the other officer who responded to the incident, Officer P. Thomas. The Custodian also certified that the City does not have records responsive to the Complainant’s request item number 2. The Custodian certified that “where records either do not exist or are not in the custodian’s possession, there is of necessity, no denial of access at all,” citing Bent v. Stafford Twp., 381 N.J. Super. 30, 38 (App. Div. 2005). The Custodian certified that the Complainant has been provided with all existing footage responsive to his request.⁶

Analysis

Unripe Cause of Action

Here, within the statutorily-mandated period of time for the Custodian’s initial response, the Custodian informed the Complainant that two additional weeks were needed for the processing of the Complainant’s request. The Custodian certified that the extension of time was necessary for him to obtain guidance from the Hudson County Prosecutor’s Office pursuant to the Attorney General’s Law Enforcement Directive No. 2015-1 regarding BWC Recordings. Such extended time period for a response would expire on October 1, 2021. The Complainant stated that the extension of time was acceptable to him.

⁶ The Custodian attached to the SOI a certification prepared by Police Sergeant Michael Johns.

On October 1, 2019, the Custodian certified that he requested an additional two-week extension of time to fulfill the Complainant's request because the Prosecutor's Office failed to provide the necessary guidance during the first two week extension of time. Although the Complainant subsequently inquired about the status of his records request, there is nothing in the evidence of record to indicate that the Complainant objected to the second extension of time. Moreover, the second extension of time was reasonable because the Custodian needed to obtain guidance from the Prosecutor's Office. The second extension of time for a response would expire on October 15, 2021; however, the Complainant filed the complaint on October 9, 2021.

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). Additionally, OPRA provides 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.

In Inzelbuch v. Lakewood Board of Education (Ocean), GRC Complaint No. 2012-323 (February 2013), the custodian responded to the requests on the seventh (7th) business day requesting a reasonable extension of time. The complainant informed the custodian that the request for an extension of time was unacceptable and filed a complaint within the extended time frame. The Council dismissed the complaint, holding that the requested records were not immediate access records and the complainant verified his complaint before the statutory time period for the custodian to respond, as extended, had expired. More recently, in Jean-Paul v. City of Jersey City (Hudson), GRC Complaint No. 2020-227 (December 2020), the custodian responded to the request informing the complainant that due to the COVID-19 pandemic, an additional thirty day extension of time was required to fulfill the request. Although there was nothing in the evidence of record to indicate that the complainant objected to the extension of time, the complainant verified his complaint within the extended time period. The Council dismissed the complainant's complaint because the requested record was not an immediate access record and ". . . the Complainant verified his complaint before the statutory time period provided for the Custodian to respond, *as extended*, had expired." (Emphasis in original).

Here, notwithstanding the Custodian's certification that he disclosed all responsive non-exempt records to the Complainant, this complaint is materially defective and shall be dismissed because the record is not an immediate access record and because the Complainant verified his complaint before the statutory time period provided for the Custodian to respond, as extended,⁷ had expired. See Inzelbuch, GRC 2012-323 and Jean-Paul, GRC 2020-227. See also Smith v. Moorestown Twp., 2020 N.J. Super. Unpub. LEXIS 1108 (App. Div. June 10, 2020).

⁷In Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014), the GRC began deciding on the reasonableness of extensions. Although an analysis would ordinarily be necessary to justify two consecutive ten business day extensions of time consistent with Ciccarone, an analysis is not necessary here because the extensions of time were reasonable and necessary for the Custodian to comply with the Attorney General's Law Enforcement Directive No. 2015-1 regarding disclosure of BWC recordings.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that notwithstanding the Custodian's certification that he disclosed all responsive non-exempt records to the Complainant, this complaint is materially defective and shall be dismissed because the record is not an immediate access record and because the Complainant verified his complaint before the statutory time period provided for the Custodian to respond, as extended, had expired. See Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013) and Jean-Paul v. City of Jersey City (Hudson), GRC Complaint No. 2020-227 (December 2020). See also Smith v. Moorestown Twp., 2020 N.J. Super. Unpub. LEXIS 1108 (App. Div. June 10, 2020).

Prepared By: John E. Stewart
Staff Attorney

May 11, 2021