



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

May 31, 2022 Government Records Council Meeting

Perrault Jean-Paul
Complainant

Complaint No. 2020-209

v.

City of Jersey City (Hudson)
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council (“Council”) considered the May 24, 2022 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 based on the inadequate and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. See *Semprevivo v. Pinelands Reg’l Sch. Dist. Bd. of Educ. (Burlington)*, GRC Complaint No. 2007-135 (October 2008). Also, this complaint should be referred to the Office of Administrative Law 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 31st Day of May 2022

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: June 1, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

Perrault Jean-Paul¹
Complainant

GRC Complaint No. 2020-209

v.

City of Jersey City (Hudson)²
Custodial Agency

Records Relevant to Complaint: Copies via e-mail or via regular mail of:

1. “[A]ll building permit applications and building permit approvals for 25 Magnolia Ave, Jersey City, NJ from January 1, 2010 to [September 28, 2020].”
2. “[A]ll zoning permit applications and zoning permit approvals for 25 Magnolia Ave, Jersey City, NJ from January 1, 2010 to [September 28, 2020].”

Custodian of Record: Sean Gallagher

Request Received by Custodian: September 28, 2020

Response Made by Custodian: October 2, 2020 and October 6, 2020

GRC Complaint Received: October 13, 2020

Background³

Request and Response:

On September 28, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.⁴ On October 2, 2020, the fourth (4th) business day following receipt of said request, the Custodian responded in writing providing the Complainant with a link to log on to the Jersey City OPRA Center to retrieve the records responsive to his request (Jersey City number R002697-092820). On October 6, 2020, the sixth (6th) business day following receipt of said request, the Custodian again responded in writing providing the Complainant with a link to log on to the Jersey City OPRA Center to retrieve the records responsive to his second request (Jersey City number R002696-092820).

¹ No legal representation listed on record.

² Represented by Sapana Shah, Esq. (City of Jersey City, 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.

⁴ The OPRA request is a letter request invoking OPRA. The request was addressed to the Custodian, but the salutation was to the “City of Bayonne Custodian of Records.”

Denial of Access Complaint:

On October 13, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted an OPRA request to the Custodian on September 28, 2020, for zoning and planning applications filed for 19 Magnolia Avenue and 21 Magnolia Avenue from January 1, 2010 to the date of request.⁵ The Complainant stated that as of October 10, 2020 (the date he verified the complaint), the Custodian failed to respond to his request. The Complainant stated that there has been a “deemed” denial of his request pursuant to N.J.S.A. 47:1A-5(i). The Complainant attached a copy of the OPRA request dated September 28, 2020 to the complaint.

Additional Submissions:

On October 21, 2020, the GRC e-mailed the Complainant to inform him that the GRC was preparing to transmit the Statement of Information (“SOI”) request to the Custodian; however, the GRC noticed several discrepancies in the complaint that required his attention. The GRC informed the Complainant that he stated in the complaint that the request was submitted to the Township of Commercial but that the salutation in the request was to the custodian for the City of Bayonne. The GRC informed the Complainant that the GRC required clarification of the discrepancies prior to sending the SOI request to the Custodian.

On October 21, 2020, the Complainant responded to the GRC apologizing for the confusion and stated that he may have used an old document. The Complainant confirmed that the request was submitted to the City of Jersey City. The Complainant referred the GRC to the OPRA request that was attached to the complaint.

Statement of Information:

On November 6, 2020, the Custodian filed a SOI. The Custodian certified that he received the Complainant’s two (2) OPRA requests via *GovQA* on September 28, 2020. The Custodian certified that the request numbered by Jersey City as R002696-092820 sought all building permit applications filed for 19 Magnolia Avenue and 21 Magnolia Avenue from January 1, 2010 to the date of request. The Custodian certified that the request numbered by Jersey City as R002697-092820 sought all zoning and planning applications filed for 19 Magnolia Avenue and 21 Magnolia Avenue from January 1, 2010 to the date of request.

The Custodian certified that he responded on October 2, 2020, to the request numbered by Jersey City as R002697-092820. The Custodian further certified that he responded on October 6, 2020, to the request numbered by Jersey City as R002696-092820. The Custodian certified that all of the requested records in possession of Jersey City were disclosed to the Complainant via a link sent to him. The Custodian further certified that only one (1) redaction was made to the responsive records, which was deletion of an individual bank account number on a zoning application. The

⁵ These were not the records requested in the Complainant’s OPRA request. Moreover, in the complaint narrative, the Complainant stated that the request was submitted to the Township of Commercial; however, he went on to state in that same narrative that the City of Jersey City was the agency that denied him access to the records.

Custodian certified that the Complainant did not contact him to claim that any of the requested records were missing from the disclosure prior to filing the complaint.

In support of his certification, the Custodian attached to the SOI certifications from Construction Code Technical Assistant Melanie Avila, Division of Zoning Clerical Assistant Raquel Santiago, and Records Support Technician Emare Herrera. The employees each certified that records responsive to the Complainant's request were searched for, and that all responsive records that were located were made available to the Complainant.

Additional Submissions:

On November 6, 2020, the Complainant submitted to the GRC a certification in response to the Custodian's SOI. The Complainant certified that on September 8, 2020, he filed the requests described and identified by the Custodian as R002696-092820 and R002696-092820.⁶ The Complainant certified that "[t]he assertions in the certifications made by the Jersey City officials is (sic) not correct as they do not correctly state the content of the requests." The Complainant certified that not all requested building permit applications and planning and zoning related documents were disclosed to him.

On April 21, 2022, the GRC e-mailed the Complainant, referenced his November 6, 2020 certification, and asked if the Custodian had since responded to the certification. On the same date, the Complainant sent a reply e-mail to the GRC, informing the GRC that he had not received all of the records he requested.

Analysis

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.

In the complaint before the Council, the Complainant's request sought building permit applications, building permit approvals, zoning permit applications and zoning permit approvals for **25 Magnolia Avenue** in the City of Jersey City. The Complainant alleged that the Custodian did not respond to his request in a timely manner, which therefore resulted in a "deemed" denial of his request. The Complainant cited N.J.S.A. 47:1A-5(i) as the statutory provision alleged to have been violated by the Custodian. The GRC noted some discrepancies in the Complainant's submission and asked the Complainant for clarification. The Complainant stated that his request was directed to the City of Jersey City and referred the GRC to the request that he attached to the complaint.

⁶ Per the evidence of record, it is undisputed that the OPRA request was filed on September 28, 2020; therefore, the September 8, 2020 date may have been a typographical error.

The SOI submitted by the Custodian addressed two (2) separate requests filed by the Complainant on September 28, 2020, wherein building permit applications, and zoning and planning applications filed for *19 Magnolia Avenue* and *21 Magnolia Avenue* were requested. There was no mention of building permit approvals, zoning permit applications, or zoning permit approvals in the Complainant's requests that the Custodian certified he received from the Complainant. Moreover, the Custodian certified that he responded to the requests in a timely manner.

The GRC was initially of the belief that the Custodian's SOI mistakenly addressed two other requests filed by the Complainant which were not requests that formed the basis of the instant complaint. However, the Complainant submitted a certification in opposition to the SOI in which he addressed the same two requests: R002696-092820 and R002696-092820. Moreover, the Complainant did not reassert the timeliness issue he alleged as the cause of action in his complaint, or otherwise dispute the Custodian's assertion that the response was made within the statutorily mandated time frame.

In Semprevivo v. Pinelands Reg'l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008), the GRC requested that the custodian provide information to the GRC which was missing from the custodian's SOI. In reply, the custodian forwarded to the GRC three Board policies that the custodian said would provide the legal basis for the custodian to deny the complainant access to requested Board records. The GRC found that because there was inadequate evidence for the Council to render a meaningful decision in the matter, the complaint should be referred to the Office of Administrative Law ("OAL") for a hearing to resolve the facts

Therefore, based on the inadequate and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the OAL for a hearing to resolve the facts. See Semprevivo, GRC 2007-135. Also, this complaint should 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 based on the inadequate and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. See Semprevivo v. Pinelands Reg'l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008). Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: John E. Stewart
Staff Attorney

May 24, 2022