



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 29, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-99 and 2020-101

v.

Passaic County Sheriff's Office
Custodian of Record

At the June 29, 2021 public meeting, the Government Records Council ("Council") considered the June 22, 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:

1. Although Mr. Jordan's request that the Complainant submit his request through the County's "OPRA Center" system could be considered in violation of OPRA under Renna v. Cnty. of Union, 407 N.J. Super. 230, 232 (App. Div. 2009), the Custodian ultimately mooted the issue by processing and responding to the subject OPRA requests as originally submitted. Further, the County's method of transmission process does not present an unreasonable obstacle to anonymous requestors. Paff v. City of East Orange, 407 N.J. Super. 221, 229 (App. Div. 2009); Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013). Thus, no violation of OPRA occurred here.
2. The Custodian borne her burden of proof that she timely responded to the Complainant's two (2) OPRA requests. N.J.S.A. 47:1A-6. As such, there was no "deemed" of denial of the subject OPRA requests. 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).

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 29th Day of June 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: July 1, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 29, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-99 and 2020-101²

v.

**Passaic County Sheriff's Office³
Custodial Agency**

Records Relevant to Complaint:⁴

April 15, 2020 OPRA request:⁵ Electronic copies of Passaic County Sheriff's Office ("PCSO") "documents, records, and information (including printouts of computerized records)" related to the transfer of Jeffrey Valente from Haledon Police Department to the Passaic County Jail on January 2, 2014 at 2:30 p.m.

April 17, 2020 OPRA request:⁶ Electronic copies of Passaic County Sheriff's Office ("PCSO") "documents, records, and information (including printouts of computerized records)" related to the transfer of Denise Efferen from Haledon Police Department to the Passaic County Jail on November 7, 2014 between 3:53 p.m. and 5:27 p.m.

Custodian of Record: Kelly Ruffel

Request Received by Custodian: April 15, 2020; April 17, 2020

Response Made by Custodian: April 15, 2020; April 17, 2020

GRC Complaint Received: May 18, 2020

Background⁷

Request and Response:

On April 15, 2020, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On the same day, Passaic County

¹ No legal representation listed on record.

² The GRC consolidated these complaints for adjudication because of the commonality of the parties and issues.

³ Represented by Leslie S. Park, Esq. (Paterson, NJ).

⁴ The Complainant subsequently submitted a single OPRA request seeking the same records. That OPRA request is the subject of Anonymous v. Passaic Cnty. Sheriff's Office, GRC Complaint No. 2020-106, being concurrently adjudicated with this consolidated complaint.

⁵ This OPRA request is the subject of GRC Complaint No. 2020-99.

⁶ This OPRA request is the subject of GRC Complaint No. 2020-101.

⁷ 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.

Anonymous v. Passaic County Sheriff's Office, 2020-99 and 2020-101 – Findings and Recommendations of the Executive Director

Counsel Matthew P. Jordan, Esq., responded in writing (copying the Custodian) requesting that the Complainant submit his OPRA request through the County of Passaic's ("County") online "OPRA Center."

On April 17, 2020, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On the same day, Passaic County Counsel Matthew P. Jordan, Esq., responded in writing (copying the Custodian) requesting that the Complainant submit his OPRA request through the County's online "OPRA Center."

On April 22, 2020, the fifth (5th) and third (3rd) business day after receipt of each OPRA request respectively, the Custodian responded in writing stating that the County has taken emergency personnel steps because of the COVID-19 pandemic. The Custodian thus stated that the County "reserves its right" to respond to the subject OPRA requests within thirty (30) days, or by June 3, 2020. N.J.S.A. 47:1A-5(g)

Denial of Access Complaint:

On May 18, 2020, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant asserted that Mr. Jordan's requirement that the Complainant file the subject OPRA requests through the County's "OPRA Center" is a violation of OPRA's provisions allowing for requestors to remain anonymous. The Complainant argued that requestors submitting requests through that system are required to input several categories of personal information to set up an account. The Complainant also noted that while the "OPRA Center" allowed for individuals to download, complete, and mail the County's official OPRA request form, the County only provided a mailing address and no fax number. The Complainant contended that the forgoing also resulted in a violation of OPRA.

The Complainant further argued that GovQA, the site's administrator, collects this data (inclusive of IP address) thereby making it possible to identify the requestor and their physical location. The Complainant contended that the County had no authority to require a requestor to file an OPRA request through a third party. The Complainant further argued that the County's rejection of his OPRA request "violated [his] constitutional right to equal protection under [OPRA]."⁸

The Complainant also noted that the Custodian's failure to respond within seven (7) business days resulted in a "deemed" denial of access.

Supplemental Response:

On May 29, 2020, the Custodian responded to both OPRA requests in writing disclosing

⁸ The Complainant also argued that the Custodian violated N.J.S.A. 2C:21-4(a); N.J.S.A. 2C:28-7(a)(3); and N.J.S.A. 2C:30-2(b) and asked that the GRC refer these issues to the Office of the Attorney General for criminal prosecution. The GRC notes that its authority is limited to alleged denials of access under OPRA and does not extend to issues of record veracity or content. N.J.S.A. 47:1A-7(b); Kwanzaa v. NJ Dep't of Corr., GRC Complaint No. 2004-167 (March 2005). Further, neither OPRA nor the GRC's regulations provide it with the authority to refer Denial of Access Complaint issues to another agency for criminal prosecution. Thus, to the extent that Complainant wishes to pursue said issues, he should pursue them personally through the appropriate avenues.

multiple responsive records. The Custodian also included an explanation of each redaction by identifying the page number, information redacted, and specific lawful basis for each redaction.

Statement of Information:

On June 22, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that Mr. Jordan received the Complainant’s OPRA requests on April 15, and 17, 2020 respectively. The Custodian certified that Mr. Jordan responded in writing on the same day as receipt of each OPRA request directing the Complainant to submit them through the County’s “OPRA Center.” The Custodian certified that both her and Assistant Erin Schlosser were copied on Mr. Jordan’s response.

The Custodian certified that on April 22, 2020, Ms. Schlosser entered both OPRA requests into the County’s “OPRA Central” central system as a single consolidated request and named the entry “Reference No. R005461-042220.” The Custodian affirmed that on that day, she responded to the Complainant extending the response time frame through June 3, 2020 because of the COVID-19 pandemic. The Custodian affirmed that on May 29, 2020, within the extended time frame, she responded to the Complainant in writing disclosing all responsive records with redactions.

Analysis

Method of Transmission

OPRA states that “a request for access to a government record *shall be in writing* and hand-delivered, mailed, *transmitted electronically*, or otherwise conveyed to the appropriate custodian.” N.J.S.A. 47:1A-5(g) (emphasis added). However, public agencies can determine specific methods of transmission for OPRA requests so long as those methods do not present an unreasonable obstruction to access. See Paff v. City of East Orange, 407 N.J. Super. 221, 229 (App. Div. 2009); Dello Russo v. City of East Orange (Essex), GRC Complaint No. 2014-430 (Interim Order dated September 29, 2015). Further, in Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013), the Council addressed the agency’s specific transmission methods, noting that they included proper contact information on the official OPRA request form.

Also, in Renna v. Cnty. of Union, 407 N.J. Super. 230, 232 (App. Div. 2009), the Appellate Division held that although requestors should continue to use public agencies’ OPRA request forms when making requests, no custodian shall withhold such records if the written request, not presented on the official form, contains the requisite information prescribed in N.J.S.A. 47:1A-5(f). Id. In effect, this permits requestors to write their own correspondence seeking records from a custodian, as long as the request properly invokes OPRA.

Further, OPRA permits a requestor to submit an OPRA request anonymously. N.J.S.A. 47:1A-5(i). The procedure for requesting records anonymously under OPRA does not generally depart from the typical way of requesting records under OPRA, with one exception. If a requestor were to request records anonymously and did not provide any contact information, “the custodian

shall not be required to respond until the requestor reappears before the custodian seeking a response to the original request.” Id.

Here, the Complainant contended that the Custodian violated OPRA by requiring him to submit an OPRA request through the County’s “OPRA Center” because the system required him to identify himself. The Complainant also contended that the County only provided a mailing address by which an individual could submit the official, non-system OPRA request form. Conversely, the Custodian certified in the SOI that Ms. Schlosser entered the Complainant’s OPRA requests into the “OPRA Center” system on April 22, 2020. Further, the Custodian certified that she responded in writing extending the time frame and subsequently disclosed responsive records.

In determining whether a violation of OPRA occurred here, the GRC looks to Renna, 407 N.J. Super. at 232; Paff, 407 N.J. Super. at 229; and Paff, GRC 2012-158. Initially, and as stated in Renna, the Complainant is correct that he was not required to use the County’s official OPRA request form in lieu of his original submission, which specifically cited to OPRA. Further, OPRA allows for anonymous OPRA requests and requiring an individual to reveal their identity through online request systems does not comport with said capability. However, the evidence of record supports that the Custodian processed and responded to the subject OPRA requests without further action from the Complainant, thus rendering this argument moot.

However, notwithstanding Mr. Jordan’s request that the Complainant use the “OPRA Center,” the Complainant is incorrect that the County unnecessarily limited his method of transmission. Paff, 407 N.J. Super. at 229. While the County’s “OPRA Center” may be harmful to an individual’s ability to remain anonymous, the County does offer a fax number at the top of its official OPRA request form.⁹ Thus, as in Paff GRC 2012-158 and contrary to the Complainant’s assertions, the County’s methods of transmission do not present an unreasonable obstruction to access for anonymous requestors.

Therefore, although Mr. Jordan’s request that the Complainant submit his request through the County’s “OPRA Center” system could be considered in violation of OPRA under Renna, 407 N.J. Super. at 232, the Custodian ultimately mooted the issue by processing and responding to the subject OPRA requests as originally submitted. Further, the County’s method of transmission process does not present an unreasonable obstacle to anonymous requestors. Paff, 407 N.J. Super. at 229; Paff, GRC 2012-158. Thus, no violation of OPRA occurred here.

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

⁹ A link to the official OPRA request form is included on the website page the Complainant identified as only providing a mailing address. While this is true, a link to the County’s official OPRA request form, which includes a fax number, is available on that same page. Passaic County OPRA Center (mycusthelp.com) (accessed May 12, 2021). Anonymous v. Passaic County Sheriff’s Office, 2020-99 and 2020-101 – Findings and Recommendations of the Executive Director

N.J.S.A. 47:1A-5(g).¹⁰ 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).

Here, the Complainant contended, among other things, that the Custodian failed to respond to both OPRA requests. However, the Custodian certified in the SOI that she responded to both OPRA requests in writing on April 22, 2020 extending the response time frame through June 3, 2020. Further, the Custodian certified that on May 29, 2020, within that extended time frame, she disclosed all responsive records (with redactions). The documentation attached to the SOI supports the Custodian's position that she responded to the proper e-mail address twice and disclosed responsive records thereafter.

Therefore, the Custodian borne her burden of proof that she timely responded to the Complainant's two (2) OPRA requests. N.J.S.A. 47:1A-6. As such, there was no "deemed" of denial of the subject OPRA requests. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although Mr. Jordan's request that the Complainant submit his request through the County's "OPRA Center" system could be considered in violation of OPRA under Renna v. Cnty. of Union, 407 N.J. Super. 230, 232 (App. Div. 2009), the Custodian ultimately mooted the issue by processing and responding to the subject OPRA requests as originally submitted. Further, the County's method of transmission process does not present an unreasonable obstacle to anonymous requestors. Paff v. City of East Orange, 407 N.J. Super. 221, 229 (App. Div. 2009); Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013). Thus, no violation of OPRA occurred here.
2. The Custodian borne her burden of proof that she timely responded to the Complainant's two (2) OPRA requests. N.J.S.A. 47:1A-6. As such, there was no "deemed" of denial of the subject OPRA requests. 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).

Prepared By: Frank F. Caruso
Executive Director

June 22, 2021

¹⁰ 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.