



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 28, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2021-325

v.

Borough of Haledon (Passaic)
Custodian of Record

At the March 28, 2023 public meeting, the Government Records Council (“Council”) considered the March 21, 2023 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. The Custodian did not bear his burden of proof that he timely responded to the portions of the Complainant’s July 1, 2021 OPRA request based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014). Therefore, the Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a “deemed” denial of the remainder of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
2. The Custodian unlawfully denied access to most of the responsive June Haledon Police Department daily logs. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to timely disclose them or argue that same were exempt under OPRA. However, the GRC declines to order any further action because the Custodian and Ms. Van Hook ultimately disclosed the responsive records to the Complainant on December 13, 2021 and March 14, 2023 respectively.

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 28th Day of March 2023

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: April 3, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 28, 2023 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2021-325

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of Haledon Police Department (“HPD”) daily logs from June 1, 2021 through June 30, 2021.

Custodian of Record: Allan Susen³
Request Received by Custodian: July 1, 2021
Response Made by Custodian: Various
GRC Complaint Received: December 13, 2021

Background⁴

Request and Response:

On July 1, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 12, 2021, the Custodian responded in writing obtaining an extension of time until July 21, 2021 to respond to the subject OPRA request. On July 21, 2021, the Custodian responded in writing seeking another extension until July 30, 2021 to respond to the subject OPRA request. The Custodian sought additional extensions in writing on July 30, August 10, August 19, August 30, September 8, September 17, September 28, October 7, October 18, October 27, November 5, and November 17, 2021. On November 22, 2021, the Custodian responded in writing disclosing records to the Complainant.

Denial of Access Complaint:

On December 13, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that the Custodian’s extensions

¹ No legal representation listed on record.

² Represented by Joseph M. Wenzel, Esq., of Friend & Wenzel, LLC. (Clifton, NJ), who entered his appearance on February 23, 2023. Previously represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

³ The Custodian retired on January 1, 2023. Deputy Clerk Joanne Van Hook briefly served as “custodian of record” under Mr. Mounir Almaita was hired to serve as the Borough’s Municipal Clerk.

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.

amounting to 100 business days was unreasonable. The Complainant contended that he submitted similar OPRA requests for daily logs in May and June 2021 that were fulfilled within nine (9) and six (6) business days respectively.

The Complainant argued that the number of extensions taken were fraudulent because the Custodian clearly knew that the responsive records were maintained on and accessible through HPD's computer-aided dispatch ("CAD") system. The Complainant also argued that the records ultimately disclosed were only the first 2 pages of logs and no dispatch logs were included.

Supplemental Response:

On December 13, 2021, Records Officer Nicholas Freitas e-mailed the GRC stating that HPD believed that the Complainant only sought police activity logs. Mr. Freitas stated that it was not until reviewing the two (2) prior OPRA requests mentioned in the Denial of Access Complaint that he realized the Complainant also sought CAD lists associated therewith. Mr. Freitas stated that he was attaching the additional records, which should satisfy the subject OPRA request.

Statement of Information:

On December 27, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on July 1, 2021. The Custodian certified that his search included forwarding the OPRA request to HPD but that staffing changes caused the need for multiple extensions. The Custodian certified that he responded in writing taking those extensions up until disclosing partial records on November 22, 2021. The Custodian affirmed that after receiving the Denial of Access Complaint, he disclosed additional records totaling 230 pages to the Complainant on December 13, 2021.

The Custodian contended that he originally disclosed what he thought to be responsive. The Custodian asserted that upon receipt of the complaint discussing prior OPRA requests for "the same type of records," he reviewed them and immediately retrieved the "missing records" for disclosure. The Custodian argued that there was no intentional intent to deny access to records. The Custodian noted that support for the forgoing rests in rapid attention given to disclosing additional records shortly after this complaint filing.

Additional Submissions:

On September 12, 2022, the Complainant e-mailed the GRC confirming receipt of the records, noting that it took the Custodian less than a business day to disclose all responsive records. The Complainant further alleged that the logs for June 11, 2021 were disclosed incomplete and missing a fifth (5th) page containing approximately thirty (30) entries between 20:36 and 23:59.

On March 6, 2023, the GRC sent a letter to the Custodian seeking additional information. The GRC advised that the Complainant alleged that the June 11, 2021 daily logs disclosed to him were incomplete. The GRC thus requested that the Custodian respond to the following:

1. Does there exist a page 5 for each of the June 11, 2021 daily logs disclosed to the Complainant?
2. If the answer to the above is yes, were those pages subsequently disclosed to the Complainant? If disclosed, please provide the date and supporting documentation showing that same were provided to the Complainant.

The GRC requested that the Custodian provide her response as a legal certification by close of business on March 9, 2023.

On March 8, 2023, Deputy Clerk Joanne Van Hook e-mailed the GRC a letter from HPD's Records Division noting that CAD reports, which were requested but not previously disclosed, were attached for review. On March 9, 2023, the GRC e-mailed Ms. Van Hook stating that it would not accept the March 8, 2023 e-mail as a response to the March 6, 2023 request for additional information because 1) it did not answer the questions posed therein; 2) it did not include a legal certification; and 3) it was not copied to all parties and thus represented *ex parte* communication per N.J.A.C. 5:105-2.4(b). The GRC thus provided Ms. Van Hook additional time through March 14, 2023 to properly address the request for additional information by curing the above deficiencies.

On March 14, 2023, Ms. Van Hook responded to the GRC's request for additional information. Therein, Ms. Van Hook certified that in response to question No. 1, a fifth (5th) page of the June 11, 2021 daily logs existed and that same was included in the Borough's December 13, 2021 response. Ms. Van Hook further affirmed that a true and accurate copy of the page was included with the certification.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must 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 accordingly 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).⁵ 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).

OPRA provides that a custodian may request an extension of time to respond to the complainant's OPRA request, but the custodian must provide a specific date by which they will respond. Should the custodian fail to respond by that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i).

⁵ 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.

In Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant's request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian's request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that "because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i)."

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant's OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian's request for an extension of time [to a specific date] to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Moreover, in Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), the Council again 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, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014), the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a "deemed" denial of access, the Council looked to what is "reasonably necessary."

In the instant matter, the Custodian sought fourteen (14) extensions for the Complainant's OPRA request spanning from July 12, 2021 through November 26, 2021 for a total of approximately ninety-six (96) business days, accounting for public holidays and closures. As noted above, a requestor's approval is not required for a valid extension. However, it should be noted that the Complainant did not object to any extension prior to filing this complaint.

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already had to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to respond effectively to the request.⁶ Id.

Regarding the request, the Complainant sought HPD "daily logs" for a one (1) month period. Such a request was rather simplistic; the Complainant noted in the Denial of Access Complaint that the Borough previously disclosed similar records in recent months within nine (9) and six (6) business days respectively. In the SOI, the Custodian asserted that staff changes in HPD's Records Division necessitated the extensions of time. However, the Custodian did not include any additional explanation on how those changes could have resulted in over four (4) months in delays. Further, there does not appear to be any potential stressors faced by the Borough during that time frame. The Custodian ultimately responded three (3) business days prior to the expiration of the final extension disclosing incomplete records.

From the Custodian's receipt of the Complainant's OPRA request, she initially sought seven (7) business days to respond. The Custodian then sought thirteen (13) additional extensions comprising approximately eighty-nine (89) business days. Thus, the Custodian sought, in addition to the original seven (7) business days, an extension of over four and a half months of business days. The Custodian's response effectively eliminated a miniscule amount of time off the end of the last extension, which expired on the Friday after Thanksgiving. However, it was not until December 13, 2021 that the Custodian disclosed the entirety of the responsive records, which totaled 230 pages (minus at least one page for the June 11, 2021 log, which will be addressed later in this analysis).

In determining whether the extensions were ultimately unreasonable, the GRC looks directly to Ciccarone, wherein the Council held that the custodian's eight (8) extensions totaling fifty-nine (59) business days to address the complainant's five (5) item OPRA request was unwarranted and unsubstantiated. In reaching this conclusion, the Council noted that the Custodian provided basic and unpersuasive reasons for needing that amount of time to address the Complainant's request. Here, the Custodian similarly advanced an anemic reason of "additional time is needed to locate records." His SOI assertion that HPD incurred staffing changes does not provide sufficient support for the ninety (90) additional business days it took to disclose logs similar to those previously disclosed in response to earlier OPRA requests. Thus, based on the

⁶ "Extenuating circumstances" could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency's need to reallocate resources to a higher priority due to *force majeure*.

evidence of record, the GRC finds that extending the response time for the OPRA request to the extent demonstrated in the instant matter was excessive.

Accordingly, the Custodian did not bear his burden of proof that he timely responded to the portions of the Complainant's July 1, 2021 OPRA request based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Ciccarone, GRC 2013-280. Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the remainder of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).

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.

The Complainant filed the instant complaint contending that the Custodian's November 22, 2021 response was incomplete because he only disclosed the duty assignment pages of the responsive logs and none of the dispatch reports associated therewith. On December 13, 2021, following receipt of this complaint, the Custodian disclosed 230 pages of daily log reports including both the assignments and dispatch reports. In response to the SOI, the Complainant posited that the June 11, 2021 log was incomplete because it was missing additional entries occurring after 20:36. In her March 9, 2023 response to the GRC's request for additional information, Ms. Van Hook confirmed that a fifth (5th) page existed and attached it to her certification, on which the Complainant was copied. Ms. Van Hook further noted that the page was included in the Custodian's December 13, 2021 response.

A review of this complaint provides that the Custodian unlawfully denied access to most of the records. First, the Custodian failed to disclose the logs in their entirety until after the filing of this complaint. At no point has the Custodian asserted that the logs were exempt for some reason; he alleged that the Borough simply misunderstood his OPRA request until receiving the complaint and reviewing the prior OPRA requests referenced therein for guidance.

Further, although records were ultimately disclosed, the question of the missing June 11, 2021 log page endured on until Ms. Van Hook's March 14, 2023 legal certification attaching same. Interestingly, Ms. Van Hook certified that the page was included in attachment sent to the Complainant on December 13, 2021. However, the GRC was copied on that disclosure and was unable to locate it in either that e-mail or the copy of the disclosure attached to the SOI. Notwithstanding, any action would now be moot because the page was provided to the Complainant through the legal certification. Thus, all outstanding records have been disclosed through the Borough's December 13, 2021 and March 14, 2023 correspondence.

Accordingly, the Custodian unlawfully denied access to most of the responsive June HPD daily logs. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to timely disclose them or argue that same were exempt under OPRA. However, the GRC declines to order any further action because the Custodian and Ms. Van Hook ultimately disclosed the responsive records to the Complainant on December 13, 2021 and March 14, 2023 respectively.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the portions of the Complainant's July 1, 2021 OPRA request based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014). Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the remainder of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
2. The Custodian unlawfully denied access to most of the responsive June Haledon Police Department daily logs. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to timely disclose them or argue that same were exempt under OPRA. However, the GRC declines to order any further action because the Custodian and Ms. Van Hook ultimately disclosed the responsive records to the Complainant on December 13, 2021 and March 14, 2023 respectively.

Prepared By: Frank F. Caruso
Executive Director

March 21, 2023