



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 31, 2022 Government Records Council Meeting

Jeffrey Voigt
Complainant

Complaint No. 2021-61

v.

Village of Ridgewood (Bergen)
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:

1. Although the Custodian did not timely respond to the Complainant’s three (3) OPRA requests seeking “immediate access” records, she adhered to N.J.S.A. 47:1A-5(i)(2) in making a reasonable effort to respond to such by extending the time frame. Furthermore, the explanation justifies the need for the extensions of time to provide the Complainant with responsive records. As such, the due to the extenuating extreme circumstances, the Custodian’s failure to timely respond and seeking multiple extensions of time does not constitute a “deemed” denial. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i)(2).
2. This complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond, *as extended*, had expired and immediate access records are not at issue. See Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009) and Hardwick v. N.J. Dep’t of Transp., GRC Complaint No. 2011-52 (August 2012). See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

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 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 2, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Jeffrey Voigt¹
Complainant**

GRC Complaint No. 2021-61

v.

**Village of Ridgewood (Bergen)²
Custodial Agency**

Records Relevant to Complaint:³

February 11, 2021 OPRA request: Copies of all invoices for legal work submitted by Custodian's Counsel for December 2020.

February 12, 2021 OPRA request: Copies of all invoices for legal work submitted by Custodian's Counsel for November 2020.

February 17, 2021 OPRA request: Copies of all invoices for legal work submitted to the Village of Ridgewood ("Village") by William Northgrave, Esq. and McManimon, Scotland & Baumann, LLC (the "Firm") for July 2020 through December 2020

Custodian of Record: Donna Jackson

Request Received by Custodian: February 11, 2021; February 12, 2021, February 17, 2021

Response Made by Custodian: February 26, 2021

GRC Complaint Received: March 15, 2021

Background⁴

Request and Response:

On February 11, 2021, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On February 12, 2021, the Complainant submitted a second (2nd) OPRA request to the Custodian seeking the above-mentioned records. On February 17, 2021, the Complainant submitted a third (3rd) OPRA request to the Custodian seeking the above-mentioned records.

¹ No legal representation listed on record.

² Represented by Matthew S. Rogers, Esq. of Law Office of Matthew S. Rogers, LLC (Ridgewood, NJ).

³ The February 11, 12, and 17, 2021 OPRA requests are the subject of GRC Complaint No. 2021-61. The March 11, 2021 OPRA requests are the subject of GRC Complaint No. 2021-65.

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 February 26, 2021, the eleventh (11th), tenth (10th), and seventh (7th) business day after receipt of each OPRA request, the Custodian responded in writing advising that an extension of time to respond through March 19, 2021 was necessary. On the same day, the Custodian e-mailed the November and December 2020 invoices to Custodian's Counsel for review and redaction. On February 27, 2021, the Complainant e-mailed the Custodian questioning the need for such an extension. On February 28, 2021, the Complainant again e-mailed the Custodian asserting that he believed the Village was "dragging their feet" in responding to his OPRA requests; those records sought should be readily available. On March 1, 2021, the Custodian responded stating that in accordance with prior discussions, she cannot release invoices that have not been approved by the Village. The Custodian noted that the Village has not approved any bills since the beginning of 2021. The Custodian also stated that she was working on gathering the records for review by the applicable attorneys.

On March 2, 2021, the Complainant e-mailed the Custodian questioning whether the Village paid the bills sought in his February 11 and 12, 2021 OPRA requests, noting his concern that disclosure was "being purposely delayed." On the same day, the Custodian e-mailed the Complainant seeking clarification of the February 17, 2021 OPRA request. Specifically, the Custodian asked the Complainant to clarify whether "to December 2020" meant through November 30, 2021. On March 11, 2021, the Complainant e-mailed the Custodian demanding that responsive records for his February 11 and 12, 2021 OPRA requests be provided by close of business on the next day. On the same day, the Custodian advised that the invoices responsive to the February 17, 2021 OPRA request would be disclosed on March 16, 2021.

On March 12, 2021, the Custodian responded in writing to the Complainant's February 11, and 12, 2021 OPRA requests disclosing the responsive invoices (53 and 40 pages) with redactions.

Denial of Access Complaint:

On March 15, 2021,⁵ the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed the Custodian's extension of time to respond to the subject OPRA requests, noting that she failed to provide a reason for it upon his request on February 26, 2021. The Complainant argued that it was not until he threatened to file a complaint with the GRC that the Custodian replied stating that responsive records would be provided.

Supplemental Responses:

On March 16, 2021, the Custodian resent to the Complainant the records responsive to the February 11, and 12, 2021 OPRA requests noting that redactions were applied to information considered exempt under the attorney-client privilege or attorney work product exemptions. N.J.S.A. 47:1A-1.1. On the same day, the Custodian also responded in writing to the Complainant's February 17, 2021 OPRA request disclosing the responsive invoices (24 pages) "approved by Council at this time" with redactions. The Custodian noted that the redactions were

⁵ The Complainant verified and submitted his complaint on March 12, 2021 at 9:14 am and prior to the Custodian's responses to the February 11 and 12, 2021 ORPA requests.

applied to information considered exempt under the attorney-client privilege or attorney work product exemptions. N.J.S.A. 47:1A-1.1.

Statement of Information:

On April 12, 2021, the Custodian filed a Statement of Information (“SOI”).

The Custodian certified that she received the Complainant’s February 11, 2021 OPRA request on the same day. The Custodian certified that her search included contacting the Manager’s Office and Accounts Payable to obtain responsive invoices. The Custodian affirmed that once procured, she forwarded the December 2020 invoices to Custodian’s Counsel for review and redaction. The Custodian affirmed that she responded in writing to the Complainant on February 26, 2021 seeking an extension of time through March 19, 2021 to respond to the subject OPRA request. The Custodian certified she again responded in writing on March 12, 2021 disclosing the responsive December 2020 invoices (53 pages) with redactions. The Custodian notes that she subsequently e-mailed the Complainant on March 16, 2021 advising that the redacted material fell under the attorney-client and attorney work product privileges.

The Custodian certified that she received the Complainant’s February 12, 2021 OPRA request on the same day. The Custodian certified that her search included contacting the Manager’s Office and Accounts Payable to obtain responsive invoices. The Custodian affirmed that she responded in writing to the Complainant on February 26, 2021 seeking an extension of time through March 19, 2021 to respond to the subject OPRA request. The Custodian affirmed that once procured, she forwarded the November 2020 invoices to Custodian’s Counsel for review and redaction. The Custodian certified she responded in writing on March 12, 2021 disclosing the responsive November 2020 invoices (40 pages) with redactions. The Custodian notes that she subsequently e-mailed the Complainant on March 16, 2021 advising that the redacted material fell under the attorney-client and attorney work product privileges.

The Custodian certified that she received the Complainant’s February 17, 2021 OPRA request on the same day. The Custodian certified that her search included contacting the Village Treasurer, Accounts Payable and the Firm, as well as conducting an internal search to obtain responsive invoices. The Custodian affirmed that she responded in writing to the Complainant on February 26, 2021 seeking an extension of time through March 19, 2021 to respond to the subject OPRA request. The Custodian certified she responded in writing to the Complainant on March 16, 2021 disclosing the responsive Firm invoices (24 pages) with redactions under the attorney-client and attorney work product privileges.

The Custodian argued that her delay in disclosing the responsive records did not equate to a violation of OPRA for two reasons. The Custodian first argued that she could not disclose the requested invoices because “the requested documents had not been approved by the Village Council.” The Custodian argued that the Village Council’s inability to process payment on the requested bills at its January 2021 meeting resulted in the delayed approval and disclose to the public.

The Custodian next argued that her actions were lawful and consistent with amendments made to OPRA on March 20, 2020 in response to the COVID-19 Public Health Emergency (“PHE”). The Custodian stated that on that day, the Legislature amended OPRA to waive the statutory response time frame during a PHE under the Emergency Health Powers Act (N.J.S.A. 26:13-1, *et seq.*) or other state of emergency under the Disaster Control Act (N.J.S.A. App. A. 9-33, *et seq.*). N.J.S.A. 47:1A-5(i)(2). The Custodian noted that the amendment nonetheless required a custodian to “make a reasonable effort” to respond during that time. The Custodian asserted that reasonable efforts include extensions of time, which she utilized here to ensure compliance with the subject OPRA requests. The Custodian thus argued that she conformed to the intent of OPRA as amended. The Custodian finally argued that the Complainant, a former Village Councilmember, should be familiar with the approval process for “professional fees/bills” and the impact that the COVID-19 PHE had on the Village’s operations.

Analysis

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 N.J.S.A. 47:1A-5(g).⁶ 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 dated October 31, 2007).

Likewise, barring extenuating circumstances, a custodian’s failure to respond immediately in writing to a complainant’s OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a “deemed” denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).⁷ *See* Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012). *See also* Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of “immediate access” records).

Additionally, the Legislature amended OPRA on March 20, 2020, in response to the global pandemic. P.L. 2020, c.10. Based on that amendment, N.J.S.A. 47:1A-5(i) now provides that:

⁶ 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.

⁷ OPRA lists immediate access records as “budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.”

[Id. at (2).]

“Paragraph (1) of this subsection” refers to N.J.S.A. 47:1A-5(i) and “subsection e. of this section” refers to N.J.S.A. 47:1A-5(e).

In the instant matter, the Custodian certified that he received the subject OPRA requests, which sought “immediate access” items, on February 11, 12, and 17, 2021. The Custodian first responded to these three (3) OPRA requests on February 26, 2021 obtaining an extension of time until March 19, 2021. The Complainant questioned the need for this extension and eventually filed the instant Denial of Access Complaint on that issue on March 12, 2021, five (5) business days before expiration of the extended time frame to respond. The Custodian subsequently disclosed responsive records, which she stated were “approved by Council at this time,”⁸ on March 12, and 16, 2021, which fell five (5) and three (3) business days within the extended time frame to respond.

Notwithstanding the presence of “immediate access” records in each of the OPRA requests and the Complainant’s dispute over the extension, the March 20, 2020 amendment to N.J.S.A. 47:1A-5 supports the Custodian’s actions here. Specifically, the Custodian’s actions in not adhering to N.J.S.A. 47:1A-5(e) and (i)(1) is consistent with OPRA’s PHE amendment. That is, there is no evidence to support that the Custodian’s response, which fell beyond the statutory time frames normally in place pursuant to N.J.S.A. 47:1A-5(e) and (i), was in some way unreasonable. Further, the fact that the Custodian was required to contact multiple individuals and conduct a review, through Counsel, to disclose 117 pages of invoices, colors the extended time frame as reasonable. Lastly, the Complainant, who previously served as a Village Councilmember during the early stages of the PHE, failed to submit any evidence to refute the Custodian’s certification.

Therefore, although the Custodian did not timely respond to the Complainant’s three (3) OPRA requests seeking “immediate access” records, she adhered to N.J.S.A. 47:1A-5(i)(2) in making a reasonable effort to respond to such by extending the time frame. Furthermore, the explanation justifies the need for the extensions of time to provide the Complainant with responsive records. As such, the due to the extenuating extreme circumstances, the Custodian’s failure to timely respond and seeking multiple extensions of time does not constitute a “deemed” denial. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i)(2).

⁸ The GRC notes that the Custodian’s contention appeared to be that the bills could not be disclosed until the Village Council approved them, presumably as to whether same were accurate. The GRC notes there does not appear to be any support that the bills were in some way exempt under OPRA because the Village had not yet voted on payment, nor has the Custodian provided a basis to support the position.

Unripe Cause of Action

The Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, Docket No. A-2122-05T2 (App. Div. 2007), *certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007).⁹ In Paff, the complainant challenged the GRC's authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian's denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. The court held that:

[t]he GRC has an independent obligation to 'render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to' OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct.

[Id.]

The court further stated that:

[a]side from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. Of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), *certif. denied*, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), *aff'd*, 24 N.J. 139 (1957).

[Id.]

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 by the time the GRC received his complaint seven business days would have passed. The Council held that ". . . the Complainant's cause of action was not ripe at the time he verified his Denial of Access Complaint." The Council reasoned that because the complainant filed the complaint before the statutorily mandated seven business day period had expired, the custodian had not yet denied the complainant access to a government record. As such, the Council dismissed the complaint.

⁹ On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

The Council has applied the same analysis to a valid extension of time. In Hardwick v. N.J. Dep't of Transp., GRC Complaint No. 2011-52 (August 2012), the custodian within the statutorily mandated seven business day period requested a valid extension of time. Thereafter, the complainant filed a Denial of Access Complaint within the extended time period. The Council held that because the complainant filed his complaint with the GRC prior to expiration of the custodian's extension of time, and as of the date the complaint was filed the custodian had not denied access to any responsive records, the complaint was unripe for adjudication and must be dismissed.

Here, the Custodian responded to the request on February 26, 2021, informing the Complainant that she required an extension of time until March 30, 2020. OPRA provides that a custodian “. . . 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). However, the Council has long held that extensions of time are proper when a custodian requests an extension in writing within the statutorily mandated time frame and provides an anticipated deadline date as to when the requested records would be made available. See Starkey v. N.J. Dep't of Transp., GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009); Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010) and O'Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010). See also Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011) and Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010).

The Custodian did not claim that any of the records sought were exempt from disclosure. Rather, the Custodian asserted that she followed N.J.S.A. 47:1A-5(i)(2) in attempting to accommodate the Complainant's three (3) OPRA requests during the continued PHE.¹⁰ However, the GRC notes *sua sponte* that the complaint was filed prematurely and is therefore unripe for adjudication. In view of the significant quantity of records sought by the Complainant's three (3) requests and the review process for them, along with other circumstances the Village during the PHE, it was reasonable for the Custodian to seek an extension of time until March 30, 2020.

N.J.S.A. 47:1A-6 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 . . .” For such a complaint to be ripe, however, the complainant must have been denied access to a government record. In the instant complaint, however, the Complainant verified his complaint on March 12, 2020, which was within the extended time period, and therefore before he was denied access to any of the records responsive to his request. Thus, the Complainant here acted in a similar manner as the complainants in Sallie, GRC 2007-226 and Hardwick, GRC 2011-52, by filing a Denial of Access Complaint with the GRC prior to expiration of the valid time period for the Custodian to respond, and therefore prior to any denial of access to the requested records. As such, the complaint is not ripe for adjudication.

¹⁰ The GRC notes P.L. 2021 c.104, which was signed into law on June 4, 2021, reinstated OPRA's normal statutory time frames established in N.J.S.A. 47:1A-5(e) and (i) notwithstanding the continuance of the PHE and except for OPRA requests seeking records directly related to a public agency's COVID-19 response.

Accordingly, this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond, *as extended*, had expired and immediate access records are not at issue. See Sallie, GRC 2007-226 and Hardwick, GRC 2011-52. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian did not timely respond to the Complainant's three (3) OPRA requests seeking "immediate access" records, she adhered to N.J.S.A. 47:1A-5(i)(2) in making a reasonable effort to respond to such by extending the time frame. Furthermore, the explanation justifies the need for the extensions of time to provide the Complainant with responsive records. As such, the due to the extenuating extreme circumstances, the Custodian's failure to timely respond and seeking multiple extensions of time does not constitute a "deemed" denial. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i)(2).

2. This complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond, *as extended*, had expired and immediate access records are not at issue. See Sallie v. N.J. Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009) and Hardwick v. N.J. Dep't of Transp., GRC Complaint No. 2011-52 (August 2012). See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

Prepared By: Frank F. Caruso
Executive Director

May 24, 2022