



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

August 30, 2022 Government Records Council Meeting

Jeffrey Voigt
Complainant

Complaint No. 2021-70

v.

Village of Ridgewood (Bergen)
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council (“Council”) considered the August 23, 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 no “deemed” denial of access occurred here because the Custodian timely responded within both the statutory and renewed time frames applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012).

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 30th Day of August 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: September 1, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 30, 2022 Council Meeting**

**Jeffrey Voigt¹
Complainant**

GRC Complaint No. 2021-70

v.

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

Records Relevant to Complaint: Copies of “the total amount paid by” the Village of Ridgewood (“Village”) to Custodian’s Counsel for his November and December 2020 bills. “Please provide each amount . . . separately.”

Custodian of Record: Donna Jackson
Request Received by Custodian: March 15, 2021
Response Made by Custodian: March 23, 2021
GRC Complaint Received: March 30, 2021

Background³

Request and Response:

On March 12, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 22, 2021, the Complainant resent the subject OPRA request to the Custodian via e-mail. On March 23, 2021, the sixth (6th) business day after receipt of the OPRA request, the Custodian responded in writing seeking clarification as to the actual records sought. On the same day, the Complainant responded via e-mail that he was seeking “the amount of the check that was cut” by the Village to the Custodian’s Counsel.

Denial of Access Complaint:

On March 30, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to the subject OPRA request.

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 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.

Supplemental Response:

On April 1, 2021, the seventh (7th) business day after receipt of the Complainant's clarification, the Custodian responded in writing disclosing two (2) pages of check registers redacting information under the privacy exemption. N.J.S.A. 47:1A-1.

Statement of Information:

On April 29, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on March 15, 2021 but did not realize this fact until after the Complainant resent it on March 22, 2021. The Custodian certified that she initially responded in writing on March 23, 2021 seeking clarification of the subject OPRA request. The Custodian affirmed that after receiving same from the Complainant, her search included requesting payments made to Custodian's Counsel from the Finance Department. The Custodian further affirmed that she also reviewed bill lists. The Custodian certified that she located the responsive pages, redacted them, and forwarded them to Custodian's Counsel for review. The Custodian certified that she responded on April 1, 2021 disclosing the pages to the Complainant.

The Custodian noted that the Complainant, a Village Councilman from July 1, 2016 through June 30, 2020, was advised of the Village's bill payment process in a March 22, 2021 conference call. The Custodian noted that during that call, the Complainant asked about the status of the subject OPRA request, to which she responded that she had no knowledge of it. The Custodian averred that after the Complainant resent the OPRA request, she determined that she had received it on March 15, 2021. The Custodian asserted that the March 22, 2021 conference, which occurred seven (7) calendar days after receipt of the request, constituted a reasonable effort to address the Complainant's multiple OPRA requests for invoice records to include the instant one. The Custodian noted that she subsequently sought clarification and disclosed the responsive records "six [(6)] business days" after the conference.

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 here included meeting with the Complainant to explain the billing process. The Custodian thus argued that she conformed to the intent of OPRA as amended.

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).⁴ 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).

Further, should a requestor amend or clarify an OPRA request, it is reasonable that the time frame for a custodian to respond should begin anew; thus, providing a custodian with the statutorily mandated time frame to respond to the new or altered OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012) (holding that the custodian's failure to respond within the new time frame following receipt of clarification resulted in a "deemed" denial of access); Gartner v. Borough of Middlesex (Middlesex), GRC Complaint No. 2014-203 (Interim Order dated February 24, 2015).

In the matter before the Council, the Complainant contended that the Custodian failed to respond to the subject OPRA request.⁵ However, the Custodian certified in the SOI that while she did not know same was submitted, she was able to identify it and seek clarification on March 23, 2021; she received the Complainant's response on the same day. Notwithstanding the Complainant providing clarification, he filed the instant complaint on March 30, 2021. Nevertheless, the Custodian certified that she disclosed the responsive records on April 1, 2021.

Thus, the issue here is whether the Custodian ultimately responded in a timely manner. Consistent with Carter, the Custodian timely responded to Complainant's OPRA request because her time for response began anew after Complainant clarified the OPRA request. That is, the Custodian sought clarification in writing on the sixth (6th) business day after receipt of the OPRA request. Further, the Custodian disclosed the records to the Complainant on the seventh (7th) business day after receiving said clarification. Thus, a "deemed" denial cannot have occurred here because the Custodian properly adhered to both the statutory and clarification times frames. Further, the GRC need not reach the question of whether said response was reasonable within the confines of the PHE amendment because no *per se* timeliness violation occurred.

Accordingly, no "deemed" denial of access occurred here because the Custodian timely responded within both the statutory and renewed time frames applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter, 2011-100.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that no "deemed" denial

⁴ 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.

⁵ The GRC notes that the Complainant's original OPRA request was invalid on its face because it sought information rather than an identifiable "government record." LaMantia v. Jamesburg Pub. Lib. (Middlesex), GRC Complaint No. 2008-140 (February 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012)

of access occurred here because the Custodian timely responded within both the statutory and renewed time frames applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012).

Prepared By: Frank F. Caruso
Executive Director

August 23, 2022