



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

June 27, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2022-192 and 2022-193

v.

Borough of Haledon (Passaic)
Custodian of Record

At the June 27, 2023 public meeting, the Government Records Council (“Council”) considered the June 20, 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 the Custodian did not bear his burden of proof that he timely responded to either of the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s March 4, 2022 and April 1, 2022 OPRA requests 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 both OPRA requests 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). However, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant via e-mail on May 24, 2022.

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 27th Day of June 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: June 29, 2023

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 27, 2023 Council Meeting**

**Anonymous¹
Complainant**

**GRC Complaint No. 2022-192
and 2022-193²**

v.

**Borough of Haledon (Passaic)³
Custodial Agency**

Records Relevant to Complaint:

March 4, 2022 OPRA request: Electronic copies via e-mail of police daily logs from February 1, 2022 through February 28, 2022.⁴

April 1, 2022 OPRA request: Electronic copies via e-mail of police daily logs from March 1, 2022 through March 31, 2022.⁵

Custodian of Record: Allan Susen⁶

Request Received by Custodian: March 4, 2022; April 1, 2022

Response Made by Custodian: May 24, 2022

GRC Complaint Received: May 16, 2022

Background⁷

Request:

On March 4, 2022 at 4:57 p.m., the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 1, 2022 at 5:46 p.m., the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records.

¹ No legal representation listed on record.

² These complaints have been consolidated due to commonality of parties and issues.

³ Represented by Joseph M. Wenzel, Esq., of Friend & Wenzel, LLC. (Clifton, NJ). Previously represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

⁴ This OPRA request is the subject of GRC Complaint No. 2022-192.

⁵ This OPRA request is the subject of GRC Complaint No. 2022-193.

⁶ The Custodian retired on January 1, 2023. Deputy Clerk Joanne Van Hook briefly served as “custodian of record” until Mr. Mounir Almaita was hired to serve as the Borough’s Municipal Clerk.

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.

Denial of Access Complaint:

On May 22, 2022, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council (“GRC”). The Complainant asserted the Custodian failed to respond to both of their OPRA requests.

Response:

On May 24, 2022, approximately fifty-five (55) business days after receipt of the March 4, 2022 OPRA request, the Custodian responded in writing disclosing all responsive logs. Also on May 24, 2022, approximately thirty-five (35) business days after receipt of the April 1, 2022 OPRA request, the Custodian responded in writing disclosing all responsive logs.

Statement of Information:

On June 7, 2022, the Custodian filed two (2) Statements of Information (“SOI”).

Regarding GRC 2022-192, the Custodian certified that he received the Complainant’s OPRA request on March 4, 2022, after business hours. The Custodian averred that the OPRA request was mistakenly overlooked and never entered into the Borough of Haledon’s (“Borough”) OPRA processing system. The Custodian certified that upon receipt of this complaint, he located the original OPRA request and immediately processed it. The Custodian affirmed that he disclosed the responsive logs to the Complainant on May 24, 2022.

Regarding GRC 2022-193, the Custodian certified that he received the Complainant’s OPRA request on April 1, 2022, after business hours. The Custodian averred that the OPRA request was mistakenly overlooked and never entered into the Borough’s OPRA processing system. The Custodian certified that upon receipt of this complaint, he located the original OPRA request and immediately processed it. The Custodian affirmed that he disclosed the responsive logs to the Complainant on May 24, 2022.

The Custodian asserted that for both complaints, there was no purposeful intent to deny the responsive records.

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).⁸ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA

⁸ 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.

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 submitted separate OPRA requests after business hours on March 4, 2022 and April 1, 2022 respectively. The Complainant subsequently e-mailed both complaints to the GRC on May 16, 2022, copying the Custodian, alleging that he received no response. In the SOI, the Custodian certified that he received the subject OPRA requests after business hours on the respective days, but they were not entered into the Borough’s OPRA system. The Custodian certified that upon receipt of both complaints, he immediately processed each OPRA request and responded disclosing all responsive records that existed on May 24, 2022. The evidence of record here clearly indicates that a “deemed” denial of access occurred for each OPRA request.

Therefore, the Custodian did not bear his burden of proof that he timely responded to either of the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s March 4, 2022 and April 1, 2022 OPRA requests 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 both OPRA requests pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. However, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant via e-mail on May 24, 2022.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not bear his burden of proof that he timely responded to either of the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s March 4, 2022 and April 1, 2022 OPRA requests 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 both OPRA requests 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). However, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant via e-mail on May 24, 2022.

Prepared By: Frank F. Caruso
Executive Director

June 20, 2023