



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

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Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

October 3, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2022-222

v.

Borough of Haledon (Passaic)
Custodian of Record

At the October 3, 2023 public meeting, the Government Records Council (“Council”) considered the September 26, 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 no “deemed” denial of access occurred here because, notwithstanding the unnotified delivery failure issue based on file size limits, the Custodian timely responded in writing within the statutory time frame applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

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 3rd Day of October 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: October 10, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 3, 2023 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2022-222

v.

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

Records Relevant to Complaint: Electronic copies of every code enforcement summons written by John Lindberg after 1603-SC-2020-10420 (issued on January 10, 2020).

Custodian of Record: Allan Susen³
Request Received by Custodian: January 20, 2021
Response Made by Custodian: January 26, 2021
GRC Complaint Received: May 23, 2022

Background⁴

Request and Response:

On January 19, 2021 at 8:05 p.m., the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 20, 2021, the Custodian directed Borough of Haledon (“Borough”) staff to enter the OPRA request into the Borough’s OPRA processing system and assign it to Mr. Lindberg and the Court Office. On the same day, the Borough’s OPRA processing system sent the Complainant an automatic message acknowledging receipt of the subject OPRA request and noting that the response deadline was February 1, 2021. On January 26, 2021, the fourth (4th) business day after receipt of the OPRA request, the Custodian responded in writing disclosing responsive records to the Complainant.

Denial of Access Complaint:

On May 23, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian

¹ No legal representation listed on record.

² Represented by Joseph Wenzel, Esq., of Friend & Wenzel, LLC (Clifton, NJ). 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” until 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.

acknowledged receipt of the subject OPRA request but failed to “suppl[y] the requested records.” The Complainant asserted that approximately 400 summonses ranging from 103-SC-2020-10422 through 1603-SC-2022-11282 existed.

Supplemental Responses:

On June 6, 2022, the Custodian contacted George Lockwood from GovPilot, the Borough’s OPRA processing system vendor, to discuss a delivery issue with his response to the subject OPRA request. On June 8, 2022, the Custodian responded to the Complainant in writing again disclosing responsive records. The Custodian noted that the original response was too large to transmit via e-mail and that remaining records would be sent in smaller groups through multiple e-mails. The Custodian proceeded to send those additional e-mails to complete delivery.

Statement of Information:

On June 9, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on January 19, 2021 at 8:05 p.m. The Custodian certified that on the next day, he directed Borough staff to enter the OPRA request into the GovPilot system and to assign it to Mr. Lindberg.⁵ The Custodian affirmed that Mr. Lindberg located the requested records and disclosed them in one (1) file to the Complainant on January 26, 2021. The Custodian certified that upon receipt of the complaint, he noticed that the Complainant asserted that no records were disclosed. The Custodian affirmed that it was determined that the file size caused a delivery failure, but that GovPilot’s system did not notify Borough staff of this issue. The Custodian certified that on June 8, 2022, he caused the records to be disclosed via multiple e-mails in smaller segments.

The Custodian argued that he believed the Borough timely responded to the subject OPRA request because GovPilot never notified him or staff that the January 26, 2021 response failed to deliver due to file size. The Custodian averred that upon receipt of the complaint, he investigated the issue and, on June 8, 2022, corrected the delivery failure by disclosing the records again in smaller groups. The Custodian argued that “[t]here was no deliberate action to prevent access” as proven by his actions upon receipt of the complaint.

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

⁵ The Custodian noted that he also referred the subject request to municipal court and was advised that OPRA does not apply to the judiciary, but that Mr. Lindberg should be able to “fill this request as he would have copies of all of his tickets.”

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 October 31, 2007).

In the matter before the Council, the Complainant submitted his OPRA request to the Borough after business hours on January 19, 2021. The Custodian received same on January 20, 2021 and sent a response to the Complainant on January 26, 2021, four (4) business days after receipt thereof, disclosing responsive records. Over a year later, the Complainant filed this complaint arguing that he did not receive a response. Upon receipt of the complaint, the Custodian determined that the January 26, 2021 response failed to deliver because the attached file was too large. The Custodian thus redisclosed the records in multiple e-mails on June 8, 2022. In the SOI, the Custodian certified to all the foregoing and noted that GovPilot, the Borough's OPRA processing system, did not notify him or staff that the original response was rejected due to size limitations.

Upon reviewing the facts here, the GRC is persuaded that no "deemed" denial occurred. Specifically, the Borough endeavored to respond in a timely manner, yet unbeknownst to the Custodian or staff, said response was rejected. It is not the case here that the Custodian either intended to but did not send his response at all or committed a typographical error of the Complainant's e-mail address. See *e.g.* Owoh, Esq. (O.B.O. AADARI) v. City of Asbury park (Monmouth), GRC Complaint No. 2018-211 (August 2020). Instead, the Custodian fully responded and was not made aware of any delivery failures until the filing of this complaint many months after the fact. For this reason, the GRC cannot reasonably find that GovPilot's system not sending a delivery failure notification to the Custodian amounts to "deemed" denial of access here.

Therefore, no "deemed" denial of access occurred here because, notwithstanding the unnotified delivery failure issue based on file size limits, the Custodian timely responded in writing within the statutory time frame applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that no "deemed" denial of access occurred here because, notwithstanding the unnotified delivery failure issue based on file size limits, the Custodian timely responded in writing within the statutory time frame applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Prepared By: Frank F. Caruso
Executive Director

September 26, 2023

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.