



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

July 26, 2022 Government Records Council Meeting

John Doe
Complainant

Complaint No. 2022-267

v.

Township of Irvington (Essex)
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 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. Because the GRC attempted on two occasions to obtain a completed Statement of Information from the Custodian, the Custodian’s failure to provide a completed Statement of Information to the GRC hindered the GRC’s obligation to “receive, hear, review and adjudicate [the] complaint” pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(a). See Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015).
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 26th Day of July 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: July 28, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 26, 2022 Council Meeting**

**John Doe¹
Complainant**

GRC Complaint No. 2022-267

v.

**Township of Irvington (Essex)²
Custodial Agency**

Records Relevant to Complaint: Via Irvington’s Property Information Portal: “The sender, recipient, date and subject of all emails on the account [\[name deleted\]@irvingtonnj.org.org](mailto:[name deleted]@irvingtonnj.org.org) from April 22, 2022 and May 24, 2022.”

Custodian of Record: Harold E. Wiener

Request Received by Custodian: May 25, 2022

Responses Made by Custodian: June 3, 2022 and June 7, 2022

GRC Complaint Received: June 14, 2022

Background³

Request and Responses:

On May 25, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 3, 2022, the sixth (6th) business day following receipt of the request, the Custodian responded in writing via e-mail requesting an extension of time until June 17, 2022, to respond to the request. On that same date, the Complainant via reply e-mail stated, “Ok.” On June 7, 2022, the Custodian e-mailed the Complainant requesting an extension of time until July 25, 2022.⁴

Denial of Access Complaint:

On June 14, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted his OPRA request to the Custodian on May 25, 2022. The Complainant stated that on June 3, 2022, the Custodian requested an extension of time until June 17, 2022, to respond to the request. The

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

⁴ The Complainant did not reply to the Custodian’s June 7, 2022 e-mail either granting or denying the request for an additional extension of time.

Complainant stated that he replied “Ok” because the Complainant believed that “15 business days seemed reasonable.” The Complainant stated that on June 7, 2022, the Custodian requested another extension of time which resulted in a “total extension of 39 business days.” The Complainant alleged that such an extension of time is unreasonable.⁵

Additional Submissions:

On June 28, 2022, the GRC sent the Custodian a request for the Statement of Information (“SOI”). The Custodian failed to submit the SOI to the GRC.

On July 8, 2022, the GRC sent the Custodian a notice that if the GRC did not receive the SOI within three (3) business days, the complaint would proceed to adjudication based only upon the information contained within the complaint. The Custodian failed to submit the SOI to the GRC.

Analysis

Failure to Submit SOI

In furtherance of the GRC’s obligation to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to government records[,]” pursuant to N.J.S.A. 47:1A-7(b), the GRC requires a custodian to submit a completed SOI. The New Jersey Administrative Code provides:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

N.J.A.C. 5:105-2.4(f).

In Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015), the GRC sent two requests to the custodian seeking submission of the SOI; however, the custodian never submitted the SOI. The Council subsequently determined that the custodian violated N.J.A.C. 5:105-2.4(a).

Here, the GRC attempted on June 28, 2022, and again on July 8, 2022, to obtain a completed SOI from the Custodian. However, the Custodian never submitted a completed SOI or otherwise responded to the GRC.

Therefore, because the GRC attempted on two occasions to obtain a completed SOI from the Custodian, the Custodian’s failure to provide a completed SOI to the GRC hindered the GRC’s obligation to “receive, hear, review and adjudicate [the] complaint” pursuant to N.J.S.A. 47:1A-

⁵ On June 28, 2022, the Complainant filed an Amended Denial of Access Complaint with the GRC; however, the amended complaint is moot because the Complainant’s original Denial of Access Complaint is defective. See *infra*.

7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(a). See Kovacs, GRC 2014-196.

Unripe Cause of Action

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.

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 June 3, 2022, informing the Complainant that he required an extension of time until June 17, 2022. 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). 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). Moreover, the Complainant agreed to the Custodian's request for an extension of time until June 17, 2022.

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 the Complainant verified his complaint on June 14, 2022, which was within the initial 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.

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. Because the GRC attempted on two occasions to obtain a completed Statement of Information from the Custodian, the Custodian's failure to provide a completed Statement of Information to the GRC hindered the GRC's obligation to "receive, hear, review and adjudicate [the] complaint" pursuant to N.J.S.A. 47:1A-7(b), and resulted in a violation of N.J.A.C. 5:105-2.4(a). See Kovacs v. Irvington Police Dep't (Essex), GRC Complaint No. 2014-196 (January 2015).
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: John E. Stewart

July 19, 2022