



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

January 30, 2024 Government Records Council Meeting

Bruce Miller
Complainant

v.

Hudson County Sheriff's Office
Custodian of Record

Complaint No. 2022-370

At the January 30, 2024 public meeting, the Government Records Council ("Council") considered the January 23, 2024 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 the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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). However, the GRC declines to order any further action because Custodian's Counsel disclosed responsive e-mails to the Complainant on August 12, 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 30th Day of January 2024

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: February 5, 2024



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 30, 2024 Council Meeting**

**Bruce Miller¹
Complainant**

GRC Complaint No. 2022-370

v.

**Hudson County Sheriff's Office²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of e-mails between seven individuals regarding the Complainant between April 20, 2022 and May 20, 2022.

Custodian of Record: Robert Taino

Request Received by Custodian: June 6, 2022

Response Made by Custodian: June 27, 2022

GRC Complaint Received: July 28, 2022

Background³

Request and Response:

On June 6, 2022, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On the same day, Maria Fernandez of Hudson County ("County") acknowledged receipt of the request. Ms. Fernandez noted that going forward, the Complainant should submit OPRA requests through the County's new portal. On June 27, 2022, the Complainant e-mailed Ms. Fernandez seeking a status update on the subject OPRA request. On the same day, the fourteenth (14th) business day after receipt of the OPRA request, the Custodian responded in writing apologizing for the delay in his response. The Custodian stated that the Complainant's OPRA request is under review and a response is anticipated by July 11, 2022.

Denial of Access Complaint:

On July 28, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted after acknowledging receipt of the subject OPRA request, the Custodian failed to respond thereafter.

¹ No legal representation listed on record.

² Represented by Kirstin Bohn, Esq., of Chasan, Lamparello, Mallon & Cappuzzo, P.C. (Secaucus, 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.

Statement of Information:

On August 12, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 6, 2022. The Custodian certified that he worked with the County to conduct an e-mail search. The Custodian certified that he initially responded in writing on June 27, 2022 extending the response time frame through July 11, 2022. The Custodian affirmed that Custodian’s Counsel subsequently responded on August 12, 2022 disclosing forty (40) pages of e-mails with redactions of certain portions thereof under the attorney-client and work product privilege, as well as the “inter-agency or intra-agency advisory, consultative, or deliberative material” exemptions. N.J.S.A. 47:1A-1.1.⁴

The Custodian stated that the Complainant previously submitted an OPRA request on April 25, 2022 that was nearly identical to the subject OPRA request except for the date range. The Custodian averred that he asked the County to perform a search for both requests and sought extensions. The Custodian noted that he had previously responded to the April OPRA request requiring a special service charge deposit and was awaiting same. The Custodian asserted that it was not until he received the instant complaint that he realized that an administrative error and conflation of the requests led to a lack of response. The Custodian certified that on August 12, 2022, concurrent with the SOI filing, Custodian’s Counsel responded on his behalf disclosing forty (40) pages of e-mails with redactions of legal discussions and personnel issues.

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).⁵ 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).

Here, the Complainant submitted his OPRA request on June 6, 2022; receipt thereof was acknowledged on same the day by Ms. Fernandez. The Complainant subsequently sought a status update on June 27, 2022, at which time the Custodian responded extending the response time frame through July 11, 2022. This complaint followed, where the Complainant asserted that he had yet to receive a response. In the SOI, the Custodian confirmed that he received the request on June 6, 2022 and did not initially respond in writing until June 27, 2022. The Custodian further argued that the response delay was the result of confusion over a similar OPRA request, but that

⁴ The Complainant has not disputed the redactions made to the disclosed records.

⁵ 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.

Custodian's Counsel disclosed records on August 12, 2022. However, the initial response delay represents fourteen (14) business days, which is clearly beyond the statutory response time frame. Thus, although the Custodian eventually disclosed records to the Complainant, a "deemed" denial of access has occurred here.⁶

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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, GRC 2007-11. However, the GRC declines to order any further action because Custodian's Counsel disclosed responsive e-mails to the Complainant on August 12, 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 the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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). However, the GRC declines to order any further action because Custodian's Counsel disclosed responsive e-mails to the Complainant on August 12, 2022.

Prepared By: Frank F. Caruso
Executive Director

January 23, 2024

⁶ The GRC notes that it does not reach the issue of the extension because the Complainant's OPRA request was already "deemed" denied at the time when the Custodian sought his first extension.