

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

FINAL DECISION

January 31, 2007 Government Records Council Meeting

Tina Renna
Complainant

Complaint No. 2006-218

v.

Union County Improvement Authority
Custodian of Record

At the January 31, 2007 public meeting, the Government Records Council (“Council”) considered the January 24, 2007 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 while the Custodian certifies that all records responsive to the request have been provided, the Custodian’s failure to respond within the statutorily mandated seven (7) business days is a “deemed” denial of the requests pursuant to 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 31st Day of January, 2007

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

Decision Distribution Date: February 5, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2007 Council Meeting**

**Tina Renna¹
Complainant**

GRC Complaint No. 2006-218

v.

**Union County Improvement Authority²
Custodian of Records**

Records Relevant to Complaint: September 6, 2006 meeting agenda, September 2006 paid bills list, July 2006 paid bills list, August 2006 paid bills list, August meeting minutes, October 4, 2006 meeting agenda, September 21, 2006 meeting minutes, and October 4, 2006 paid bills list.

Requests Made: September 18, 2006, October 10, 2006 and October 23, 2006.

Response Made: November 14, 2006

Custodian: Sean Faughnan

GRC Complaint Filed: November 13, 2006

Background

September 18, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the September 6, 2006 meeting agenda, August meeting minutes and the paid bills lists for July, August and September.

October 10, 2006

Complainant submits a second OPRA request. On this OPRA form the Complainant is requesting the August 24, 2006 minutes and the August 2, 2006 meeting minutes as well as the August 4, 2006 agenda.

October 23, 2006

The Complainant submits a third OPRA request. On this OPRA form, the Complainant is requesting the meeting minutes from August 24, 2006, August 2, 2006 and September 21, 2006. The Complainant is also requesting the list of bills paid in October 2006, and the October 4, 2006 meeting agenda.

¹ No legal representation listed.

² Jonathan Williams, *DeCotis, Fitapatrik, Cole & Wisler*, Glenpointe Centre West, 500 Frank W. Burr Blvd., Teaneck, New Jersey 07666.

November 13, 2006

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- September 18, 2006 OPRA request,
- October 10, 2006 OPRA request, and
- October 23, 2006 OPRA request.

The Complainant submitted her three (3) unanswered OPRA requests with the Denial of Access Complaint. At this time the Complainant has received no response from the Custodian regarding any of the three (3) OPRA requests.

November 14, 2006

E-mail from Custodian to Complainant. The Custodian sends the Complainant some of the records responsive and explains that the remainder of the records will be sent via e-mail and via fax the same day. The Custodian apologizes for the Complainant having to wait to receive the records responsive.

December 5, 2006

Offer of Mediation sent to both parties. Neither party agreed to mediate this complaint.

December 19, 2006

Request for Statement of Information sent to the Custodian.

January 2, 2007

Custodian’s Statement of Information (“SOI”) with the following attachments:

- September 18, 2006 Complainant’s OPRA request,
- October 10, 2006 Complainant’s OPRA request,
- October 23, 2006 Complainant’s OPRA request,
- November 14, 2006 E-mail from Custodian to Complainant, and
- Fax transmittal verification.

The Custodian certifies that all records responsive to the Complainant’s three (3) OPRA requests were provided to the Complainant on November 14, 2006. The Custodian asserts that the Complainant should withdraw this complaint.

Analysis**Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA also provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request ...* In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request ...*” (Emphasis added.) N.J.S.A. 47:1A-5.i.

Additionally, OPRA states that

“...If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy therefor ...” N.J.S.A. 47:1A-5.g.

The Complainant submitted three (3) OPRA requests to the Custodian dated September 8, 2006, October 10, 2006 and October 23, 2006. These requests went unanswered resulting in the Complainant filing a Denial of Access Complaint.

The Custodian certifies that all records responsive to the Complainant’s three (3) OPRA requests were provided to the Complainant on November 14, 2006. The Custodian asserts that the Complainant should withdraw this complaint.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

N.J.S.A. 47:1A-5.g. states that a custodian must provide a written response to a records request and N.J.S.A. 47:1A-5.i. mandates that said response must be within seven (7) business days upon receiving a request for records. The failure to appropriately respond shall be deemed a denial of the request pursuant to N.J.S.A. 47:1A-5.i.

Here, the Complainant asserts that she submitted her OPRA requests on September 8, 2006, October 10, 2006 and October 23, 2006, and that she did not receive a response from the Custodian. It wasn't until after the Complainant filed a Denial of Access Complaint that she received the records responsive to her OPRA requests. The Custodian's November 14, 2006 response goes beyond the statutorily mandated seven (7) business day time frame prescribed under OPRA creating a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5.i.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that while the Custodian certifies that all records responsive to the request have been provided, the Custodian's failure to respond within the statutorily mandated seven (7) business days is a "deemed" denial of the requests pursuant to N.J.S.A. 47:1A-5.i.

Prepared By:

Rebecca Steese
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

January 24, 2007