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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

Special Statement of the Government Records Council 2021-01

From: Frank F. Caruso, Executive Director

Date: June 4, 2021

Re: P.L. 2021, c.104 Ends Public Health Emergency and Reinstates OPRA's Response Time Frame, with an Exception

In response to today's signing of P.L. 2021, c.104, the Government Records Council ("GRC") has prepared the following guidance on the impact of the termination of the COVID-19 public health emergency and reinstatement of OPRA's the statutory response time frame, with an exception. The GRC notes that this information does not constitute legal advice or a final decision of the Council since the provisions of OPRA are applied to the specific facts of the request and/or complaint.

Generally, a custodian is required to allow for inspection or copying of government records "during regular business hours." N.J.S.A. 47:1A-5(a). Moreover, OPRA provides that a custodian must respond to an OPRA request "not later than seven business days after receiving the request." N.J.S.A. 47:1A-5(i). In determining whether the seven (7) business days have expired, the GRC has turned to N.J. Court Rules, which provides that "... the day of the act or event from which the designated period begins to run is not to be included." R. 1:3-1; See also Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-325 (Final Decision dated October 27, 2015). Thus, the statutorily mandated seven (7) business day time frame begins on the first (1st) business day after the date of receipt of an OPRA request.

Further, the GRC has consistently interpreted the term "business days" to mean those days on which a "public agency" is open for "regular business hours." N.J.S.A. 47:1A-5(a). This term does not include weekends, holidays, and regular or emergency closures. Thus, in the instance that a "public agency" is closed on an emergency basis and is not open for "regular business hours," whether in the short- or long-term, it is reasonable to conclude that those days on which the agency is closed is not included in the statutory response time frame.

On March 20, 2020, in response to the COVID-19 public health emergency, P.L. 2020, c.10 amended N.J.S.A. 47:1A-5(i) to hold in abeyance the statutory response time frame during "a state of emergency, public health emergency, or state of local disaster emergency," but requiring custodians to adhere to the time frame "as the circumstance permit . . ." Id.

Today, Governor Murphy signed P.L. 2021 c.104 providing that:

While the state of emergency declared in Executive Order No. 103 of 2020 shall remain in effect, the deadlines in paragraph (1) of subsection i. of section 6 of P.L. 2001, c.404 (C.47:1A-5) shall apply to any request made under [OPRA] after the effective date of this act, with the exception of requests made for records related to the COVID-19 response, which shall continue to be governed by paragraph (2) of subsection i. of section 6 of P.L. 2001, c.404 (C.47:1A-5).

[Id. at 4.]

P.L. 2021, c.104 thus provides that, notwithstanding a continued state of emergency, OPRA's statutory time frames immediately apply to all OPRA requests received by a "public agency" as defined in N.J.S.A. 47:1A-1.1. However, should a "public agency" receive an OPRA request seeking access to "records related to the COVID-19 response," a custodian is permitted to observe the abeyance of the time frame set forth in N.J.S.A. 47:1A-5(i)(2).

In closing, the GRC stresses that custodians shall immediately resume normal OPRA operations, except in those limited circumstances where a requestor is seeking records directly related to that agency's COVID-19 response. Further, custodians should consider narrowly construing the term "COVID-19 response" to apply to those records directly, as opposed to tangentially, relating to the agency's response to the COVID-19 pandemic. In the instances where a "public agency" receives an OPRA request seeking the category of records falling within the "COVID-19 response" exception, the GRC suggests that custodians to review Special Statement of the Government Records Council 2020-20¹ for additional guidance.

¹ [https://www.state.nj.us/grc/news/alerts/GRC%20Special%20Statement%202020-01%20\(Final\).pdf](https://www.state.nj.us/grc/news/alerts/GRC%20Special%20Statement%202020-01%20(Final).pdf).