

COMMUNITY AFFAIRS

GOVERNMENT RECORDS COUNCIL

Notice of Receipt of Petition for Rulemaking

Complaint Adjudication and Open Public Records Act (OPRA) Information Inquiry Procedures

Proposed Amendments: N.J.A.C. 5:105-2.1; N.J.A.C. 5:105-2.3

Petitioner: Thomas Paciorkowski, Esq.

Take notice that on November 24, 2025, the Government Records Council (“the Council”) received a petition for rulemaking from Thomas Paciorkowski, Esq., seeking an amendment to N.J.A.C. 5:105-2.1, “General Provisions”, and N.J.A.C. 5:105-2.3, “Complaint document submissions to the Council”. The petition requests that the Council make the following amendment to N.J.A.C. 5:105-2.1(a) (new language in **bold**):

“If the Council concludes that the complaint is within its jurisdiction and is neither frivolous nor without factual basis, the Council shall proceed with the adjudication process **and transmit the complaint to the custodian of record, and such transmittal shall constitute official service of the complaint.**”

The petitioner requests that the Council make the following amendment to N.J.A.C. 5:105-2.3(e) (deletion in [brackets]):

“The complaint submitting a completed denial of access complaint on the form required pursuant to (c) below to the Council [and custodian] initiates the complaint process.”

The petitioner proposes these changes to cure alleged inconsistencies between the Council’s rules, informal practices and guidance provided on the Council’s website. Specifically, the petitioner asserts that the Council’s rules at N.J.A.C. 5:105-2.3(a) state that the complaint process commences upon submission of a denial of access complaint to both the

Council and the custodian, and that the Council's submission form requires a complainant to certify under threat of perjury that they have simultaneously provided the denial of access complaint to both the Council and the records custodian. However, the petitioner notes that the Council's website indicates that service upon the custodian is advised, but not required. Moreover, the petitioner claims that the Council has established an "informal practice" of providing a copy of the complaint to the records custodian. The petitioner claims that this confusion has led to at least one municipality refusing to accept service of denial of access complaints from complainants. Accordingly, the petitioner requests that the Council undertake amendments to its rules to eliminate the requirement that complainants serve the custodian and instead designate the Council as the entity responsible for service of denial of access complaints.

In accordance with N.J.A.C. 1:30-4.2, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

LAW OFFICE OF THOMAS PACIORKOWSKI

102 Lord Avenue
Bayonne, N.J. 07002
tom@paciorkowski.net
201-268-9132

November 24, 2025

VIA EMAIL

Government Records Council
P.O. Box 819
Trenton, New Jersey 08625-0819
Government.Records@dca.nj.gov

Re: Submission of Petition for Rulemaking Pursuant to N.J.S.A. 52:14B-4(f)

Dear Members of the Government Records Council:

Please accept the enclosed Petition for Rulemaking, submitted pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.1 et seq., requesting that the Government Records Council undertake formal rulemaking to amend N.J.A.C. 5:105-2.3(a), N.J.A.C. 5:105-2.1(e), and related procedures regarding the service and transmission of Denial of Access Complaints.

As explained more fully in the petition, the regulatory text, the GRC's official sworn complaint form, the GRC's published website guidance, and the Council's actual internal practice concerning service on custodians are inconsistent with one another. These inconsistencies have led to confusion among complainants, legal counsel, and municipalities—including a municipality expressly refusing to accept service from a complainant.

The petition requests that the Council formally amend the regulation and related materials to eliminate the requirement that complainants serve the custodian and to designate the GRC as the entity responsible for transmitting the complaint to the custodian. This change would harmonize the regulation, the complaint form, and actual agency practice, while significantly improving clarity and uniformity for complainants—particularly unrepresented individuals.

The petition includes a detailed statement of the issue, proposed amendments to the regulation, and supporting correspondence between Petitioner and the GRC's Executive Director regarding the GRC's interpretation of the existing rule.

Please confirm receipt of this filing. I would be pleased to participate in any hearings, stakeholder discussions, or meetings held in connection with this proposed rulemaking.

Thank you for your consideration and for your continued service in administering the Open Public Records Act.

Respectfully submitted,

s/ Thomas Paciorkowski
Thomas Paciorkowski, Esq.

Attachment: Petition for Rule Making w. Ex. A

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**IN THE MATTER OF
A PETITION FOR RULEMAKING
SUBMITTED BY
THOMAS PACIORKOWSKI, ESQ.**

PETITION FOR RULEMAKING
Submitted pursuant to N.J.S.A. 52:14B-4(f)
and N.J.A.C. 1:30-4.1 et seq.

TO: Government Records Council
P.O. Box 819
Trenton, New Jersey 08625-0819
Government.Records@dca.nj.gov

FROM: Thomas Paciorkowski, Esq.
102 Lord Avenue
Bayonne, New Jersey 07002
tom@paciorkowski.net
(201) 268-9132

DATE: November 24, 2025

I. PETITIONER

Petitioner, Thomas Paciorkowski, Esq., is an attorney who regularly represents OPRA requestors before municipal custodians of records and before the Government Records Council (“GRC”). Petitioner submits this request pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.1 to request that the GRC undertake formal rulemaking to amend N.J.A.C. 5:105-2.3(a) and N.J.A.C. 5:105-2.1(e) to amend and correct the GRC’s procedures relating to the filing of Denial of Access Complaints and the process by which custodians are served with such complaints.

II. REGULATION AT ISSUE

N.J.A.C. 5:105-2.3(a) provides: “A complainant submitting a completed Denial of Access Complaint on the form required by (c) below to the Council and custodian initiates the complaint process.”

Additionally, the GRC's official Denial of Access Complaint Form requires complainants to certify under penalty of perjury: "I am simultaneously providing a copy of this complaint to the Custodian of Records."

The issue arises from inconsistency between:

- The text of N.J.A.C. 5:105-2.3(a);
- The sworn certification required on the GRC's official complaint form available at [https://www.nj.gov/grc/register/registering/Denial%20of%20Access%20Complaint%20form%20\(non-writable\).pdf](https://www.nj.gov/grc/register/registering/Denial%20of%20Access%20Complaint%20form%20(non-writable).pdf);
- The GRC's published website guidance that service on the custodian is "not required" (<https://www.nj.gov/grc/register/inquiries/>); and
- Statements made by GRC Executive Director Frank Caruso asserting that complainant service on the custodian is not required and that the GRC *historically* submits a copy of the complaint to the custodian. (See Email from Frank Caruso, Executive Director, Government Records Council, to Petitioner (Nov. 5, 2025), attached as Exhibit A.)

III. SUMMARY OF THE ISSUE NECESSITATING RULEMAKING

Petitioner seeks rulemaking because:

- The GRC has adopted an internal practice of transmitting the complaint itself to the custodian with a "request for action" which "initiates the applicable submission deadlines." See Email from Frank Caruso, Executive Director, Government Records Council, to Petitioner (Nov. 5, 2025), attached as Exhibit A.
- Despite this practice, the GRC's complaint form requires complainants to swear under penalty of perjury that they are "simultaneously" providing the complaint to the custodian.
- The GRC's website guidance states that complainant service is "not required," contradicting both the regulation and the sworn form.
- These contradictory positions have caused at least one municipality (Jersey City) to create a policy of refusing to accept service of GRC complaints from complainants "in this case or in any case going forward."

Petitioner respectfully submits that, because the GRC already treats its own transmission of the complaint as the operative act of service, the regulation should be amended to eliminate the requirement that complainants serve the custodian and instead designate the GRC as the entity responsible for service.

This change would eliminate the conflict between the regulation, the complaint form, and GRC practice and would simplify procedures for all complainants, especially unrepresented individuals.

IV. DETAILED STATEMENT OF THE PROBLEM

A. The GRC’s current interpretation contradicts the plain language of N.J.A.C. 5:105-2.3(a).

The regulation expressly states that the complaint process is initiated when the complainant submits the complaint to the Council and custodian. Treating custodian submission as optional contradicts the regulatory text.

B. The GRC’s interpretation conflicts with its own sworn complaint form.

The complaint form requires complainants to certify: “I am simultaneously providing a copy of this complaint to the Custodian of Records.”

The GRC cannot claim complainant service is optional while simultaneously requiring complainants to swear they have performed it.

C. The GRC’s interpretation contradicts the Appellate Division’s published description of GRC procedure.

In *In re Adoption of N.J.A.C. 5:105-1.6(a)(1)* (App. Div. Aug. 12, 2024), the court explained:

“The complaint, any amended complaint, and the public agency’s responses to a complaint must be served on the GRC and all parties.”

This judicial description assumes a service-based model consistent with the text of the regulation and the certification on the form.

D. The GRC is improperly relying on “practical interpretation” and “historical practice” to override the regulation.

The New Jersey Supreme Court has unequivocally held that Agencies are bound by their duly promulgated regulations and may not alter or contradict them through “interpretation” or informal practice. *In re CAFRA Permit No. 87-0959-5*, 152 N.J. 287, 308 (1997).

Here, the GRC maintains a practice that contradicts the text of its regulation and the certification on its form.

E. The inconsistency harms complainants, particularly unrepresented individuals.

The conflict between the regulation, the sworn form, and website guidance creates:

- A perjury trap, particularly for unrepresented individuals;
- Confusion for complainants;
- Uncertainty for municipalities;

- Inconsistent statewide practices;
- A basis for municipalities to reject valid complaints.

This undermines OPRA's accessibility and the integrity of the complaint process.

F. The GRC—not complainants—is the appropriate entity to serve custodians.

The GRC has acknowledged that:

- Complainants often do not know the correct custodian or contact information;
- Custodian emails change frequently;
- The GRC does not treat complainant service as operative for deadline purposes; and
- Deadlines only begin when *the GRC* transmits the complaint.

Because the GRC already performs this function, requiring complainants to serve custodians:

- Serves no administrative purpose;
- Creates procedural risk for complainants;
- Leads municipalities to reject complaints; and
- Injects unnecessary inconsistency into the process.

The most efficient, fair, and consistent approach is to designate the GRC as the serving entity.

V. RELIEF REQUESTED – PROPOSED RULEMAKING ACTION

Petitioner respectfully requests that the GRC initiate formal rulemaking to:

1. Eliminate the requirement that complainants serve the custodian of records;
2. Designate the GRC as the entity responsible for serving the custodian upon receipt of a complaint;
3. Amend the complaint form to remove the certification requiring complainant service;
4. Amend website guidance to reflect the amended procedure; and
5. Issue a formal rule aligning all procedural materials.

This reform would harmonize the regulation, complaint form, and GRC practice and would greatly benefit OPRA requestors statewide.

VI. PROPOSED REGULATORY LANGUAGE

Petitioner proposes amending N.J.A.C. 5:105-2.3(a) as follows:

“The complainant submitting a completed denial of access complaint on the form required pursuant to (c) below to the Council ~~and custodian~~ initiates the complaint process.”

If complainant service is eliminated, the certification on the complaint form requiring complainants to swear they have served the custodian must also be removed.

Petitioner also proposes amending N.J.A.C. 5:105-2.1(e) as follows (new language in brackets):

“If the Council concludes that the complaint is within its jurisdiction and is neither frivolous nor without factual basis, the Council shall proceed with the adjudication process [and transmit the complaint to the custodian of record, and such transmittal shall constitute official service of the complaint.]”

VII. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Government Records Council initiate formal rulemaking to resolve the inconsistencies between the regulation, the sworn complaint form, judicial interpretation, and current agency practice.

The Petitioner respectfully requests that the GRC undertake formal rulemaking to amend N.J.A.C. 5:105-2.3(a) and N.J.A.C. 5:105-2.1(e) as stated above.

Petitioner would welcome participation in any public meetings, hearings, or stakeholder discussions regarding this matter.

Respectfully submitted,

s/Thomas Paciorowski
Thomas Paciorowski, Esq.

EXHIBIT A

**Email Correspondence
Between Frank Caruso, Executive Director, GRC
and Petitioner**

(November 4–17, 2025)

From: Tom Paciorkowski <tom@paciorkowski.net>
Sent: Tuesday, November 4, 2025 11:12 AM
To: Government Records Council [DCA] <Government.Records@dca.nj.gov>
Cc: Sean Gallagher <SeanG@icnj.org>; Jeremy Jacobsen <JJacobsen@icnj.org>; Rossi, Maria [DCA] <Maria.Rossi@dca.nj.gov>; Thomas Paciorkowski <tpaciorkowski@sarnolawfirm.com>
Subject: [EXTERNAL] Request for Clarification – GRC Policy on Service of Denial of Access Complaints (Chandra v. City of Jersey City, GRC Complaint No. 2025-316)

Dear Government Records Council,

At the direction of Staff Attorney Maria Rossi, I am writing to request formal clarification regarding the proper method of serving a Denial of Access Complaint under N.J.A.C. 5:105-2.3(a).

This issue has arisen in the matter of Maureen Chandra v. City of Jersey City (Hudson), GRC Complaint No. 2025-316. The issue arose because the City refused to accept service of the complaint in this matter (as per Mr. Jacobsen's representation to me) when it was simultaneously served on the City at the time it was emailed to the GRC, as required by GRC regulations and the official complaint form.

Specifically, I seek the GRC's position on:

1. Whether a complaint is deemed served when the complainant simultaneously transmits it to both the Council and the custodian, as stated in N.J.A.C. 5:105-2.3(a); and
2. Whether a municipality's stated policy of refusing to accept service of a GRC complaint directly from a complainant or counsel is consistent with GRC regulations and the instructions on the official complaint form.

Jersey City's declared policy—that it “does not accept service of GRC complaints directly from complainants or their counsel; neither in this case nor in any other situation going forward”—appears to conflict with both the regulation's plain text and the complaint form's certification requirement that the complainant “simultaneously provide a copy of the complaint to the custodian of records.”

Additionally, Mr. Jacobsen has cited a statement on the GRC's website, which reads:

“While not required, requestors are advised to provide the custodian with a copy of a complaint filed with the Council.” (<https://www.nj.gov/grc/register/inquiries/>)

That website language seems inconsistent with N.J.A.C. 5:105-2.3(a), which expressly requires submission to both the Council and the custodian, and with the complaint form's certification requirement. In short, the GRC's own public-facing guidance appears to contradict its governing regulations, creating confusion that municipalities such as Jersey City are now relying upon to justify refusing service from complainants.

Accordingly, I respectfully request the GRC's clarification as to whether Jersey City's stated policy violates GRC regulations and whether a complainant's simultaneous filing with both the Council and the custodian constitutes proper service under N.J.A.C. 5:105-2.3(a).

Thank you for your time and attention to this matter. Below are my prior correspondence and the relevant emails from Jersey City's Assistant Corporation Counsel.

Respectfully,
Thomas Paciorkowski, Esq.
Attorney for Complainant, Maureen Chandra
tom@paciorkowski.net
(201) 268-9132

From: Government Records Council [DCA] [<mailto:Government.Records@dca.nj.gov>]
Sent: Wednesday, November 5, 2025 4:22 PM
To: Tom Paciorkowski <tom@paciorkowski.net>
Cc: Sean Gallagher <SeanG@icnj.org>; Jeremy Jacobsen <JJacobsen@icnj.org>; Rossi, Maria [DCA] <Maria.Rossi@dca.nj.gov>; Thomas Paciorkowski <tpaciorkowski@sarnolawfirm.com>
Subject: RE: Request for Clarification – GRC Policy on Service of Denial of Access Complaints (Chandra v. City of Jersey City, GRC Complaint No. 2025-316)

Mr. Paciorkowski,

Thank you for contacting the NJ Government Records Council ("GRC"). The information provided by the GRC is guidance and does not constitute legal advice or a final decision of the GRC regarding whether a particular record is exempt from disclosure or not since the provisions of the Open Public Records Act ("OPRA") are applied to the specific facts of the request and/or complaint. Specifically, the GRC adjudicates denial of access complaints filed against state and local government records custodians.

Regarding your inquiry, the GRC is slightly confused as to the relevance of "accepting service" to the GRC's overall process. Specifically, the GRC is unsure of whether your question is trying to determine the connection between complaint receipt dates and date calculations for various phases of the adjudication process.

For the benefit of the parties, the GRC's regulations at N.J.A.C. 5:105-2.3(a) state that a complaint is initiated when the complainant submits a Denial of Access Complaint to both the GRC and custodian. However, there is not an affirmative obligation of the complainant to do so at every turn. This is because the GRC recognizes that complainants may not possess, or have incorrect, contact information. This is especially true of e-mail or mailing addresses and where someone other than the custodian is interfacing with the complainant. Thus, the GRC has historically engaged in a practice of including a copy of the complaint as part of its first mailing to the parties (whether an offer of mediation or Statement of Information ("SOI") request). Further, OPRA contains no language discussing "service" in terms of the traditional court process for litigation.

To the extent the GRC is correct on the underlying basis for your question, the following would apply. Regardless of whether the City is recognizing "service" as one date or another, there is no impact on the adjudication process because it is the GRC's formal written request for action (either through the offer of mediation or SOI request) that initiates the applicable submission deadlines. All other response times apply accordingly thereafter.

Hopefully, this explanation sufficiently addresses your concerns on the GRC's process.

Sincerely,

Frank F. Caruso

Government Records Council

Executive Director

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

From: Tom Paciorkowski <tom@paciorkowski.net>
Sent: Monday, November 10, 2025 10:51 AM
To: Government Records Council [DCA] <Government.Records@dca.nj.gov>
Cc: Sean Gallagher <SeanG@icnj.org>; Jeremy Jacobsen <JJacobsen@icnj.org>; Rossi, Maria [DCA] <Maria.Rossi@dca.nj.gov>; Thomas Paciorkowski <tpaciorkowski@sarnolawfirm.com>
Subject: [EXTERNAL] RE: Request for Clarification – GRC Policy on Service of Denial of Access Complaints (Chandra v. City of Jersey City, GRC Complaint No. 2025-316)

Dear Mr. Caruso,

Thank you for your response of November 5. While I appreciate the explanation regarding the GRC's internal adjudication timeline, I do not believe it addresses the substantive issue I raised—namely, whether a municipality's blanket refusal to accept service of a denial-of-access complaint directly from a complainant conflicts with N.J.A.C. 5:105-2.3(a) and the official complaint form.

Your letter focuses on when the GRC's deadlines begin to run, but it sidesteps the separate question of what constitutes proper initiation and service of a complaint under the regulation. N.J.A.C. 5:105-2.3(a) explicitly states that "the complainant submitting a completed denial-of-access complaint ... to the Council and custodian initiates the complaint process." That language places an affirmative obligation on the complainant to transmit the complaint to both entities simultaneously.

The GRC May Not Disregard Its Own Regulations

As our Supreme Court held in *In re CAFRA Permit No. 87-0959-5*, 152 N.J. 287, 308 (1997), an administrative agency is bound by its duly promulgated regulations, which have the force and effect of law. An agency cannot disregard or rewrite its own rules through informal "practice." If the GRC believes the regulation should operate differently, it must go through formal rulemaking under the Administrative Procedure Act, not rely on internal convention.

The "Contact Information" Concern Does Not Eliminate the Complainant's Duty to Serve

You note that "complainants may not possess, or have incorrect, contact information," especially regarding email or mailing addresses, or that someone other than the custodian may be interfacing with the complainant. While that may occasionally occur, it does not alleviate the regulatory requirement that the complainant serve the complaint on the custodian. Even if a complainant lacks an email address, the mailing address of a municipality is easily ascertainable. Moreover, N.J.A.C. 5:105-1.3 defines the "Custodian of a Government Record" for a municipality as the municipal clerk—an official whose identity and mailing address are plainly available on the municipality's website or through a simple online search. Thus, the possibility of incomplete contact information cannot justify disregarding the service requirement explicitly set forth in the regulation.

The Regulation Requires Submission—Functionally, Service—on Both the GRC and Custodian

Although N.J.A.C. 5:105-2.3(a) uses the word “submitting” rather than “service,” the distinction is purely semantic. Both counsel in this matter have treated the act of transmission as service of process, and, significantly, the Appellate Division itself has interpreted the regulation in those terms. In *In re Adoption of N.J.A.C. 5:105-1.6(a)(1)*, A-0963-22 (App Div. 2024), the court stated: “The complaint, any amended complaint, and the public agency’s responses to a complaint must be served on the GRC and all parties.”

Thus, judicial precedent confirms that the GRC’s own regulatory scheme contemplates service of the complaint on both the Council and the custodian at the initiation of the process.

The GRC’s Current “Practice” Contradicts Its Regulations

The GRC’s email guidance and website notice suggesting that complainants are “advised, but not required,” to provide a copy to the custodian directly contradict N.J.A.C. 5:105-2.3(a) and the certification language on the official complaint form. By treating the Council’s later transmittal as the sole effective “service,” the GRC is effectively amending its regulation without following proper rulemaking procedures and creating a process inconsistent with both the regulation’s plain text and judicial interpretation.

Requested Clarification

Accordingly, I respectfully renew my request for formal clarification of the following: Does a municipality’s refusal to accept service under N.J.A.C. 5:105-2.3(a) from a complainant violate the regulation?

Given the Appellate Division’s recognition that the regulation requires service on both entities, and the binding nature of duly adopted administrative rules, the GRC should confirm that municipalities cannot lawfully refuse to accept service directly from complainants.

Thank you again for your attention. Please advise whether the GRC will issue a written clarification or consider amending its website guidance to conform with its controlling regulations.

Respectfully,
Thomas Paciorkowski, Esq.
Attorney for Complainant, Maureen Chandra

From: Government Records Council [DCA] [<mailto:Government.Records@dca.nj.gov>]
Sent: Wednesday, November 12, 2025 2:06 PM
To: Tom Paciorkowski <tom@paciorkowski.net>
Cc: Sean Gallagher <SeanG@icnj.org>; Jeremy Jacobsen <JJacobsen@icnj.org>; Rossi, Maria [DCA] <Maria.Rossi@dca.nj.gov>; Thomas Paciorkowski <tpaciorkowski@sarnolawfirm.com>
Subject: RE: Request for Clarification – GRC Policy on Service of Denial of Access Complaints (Chandra v. City of Jersey City, GRC Complaint No. 2025-316)

Mr. Paciorkowski,

To clarify, N.J.A.C. 5:105-2.3(a) merely states that the complaint process is initiated when a complainant submits a Denial of Access Complaint to the Council and custodian. It does not affirmatively direct that a complainant “shall” copy the custodian. In this way, the provision does not speak to service, nor does it identify that an agency must accept “service” in order for the process to begin. Thus, the GRC’s initial response and online guidance does not ignore its own regulations. Instead, the GRC’s initial response and guidance provided on its website is commensurate with the GRC’s practical interpretation of N.J.A.C. 5:105-2.3(a) and historical application thereof. Further, the Appellate Division’s dicta summation of the GRC’s regulations is not binding on its actual practical interpretation of its promulgated regulations.

In closing, and to answer your question directly, there does not appear to exist a “violation” of the GRC’s regulations. However, the GRC reiterates that it cannot determine why this issue is of importance to you and how you believe it may impact the adjudication of your recently filed complaint.

Sincerely,

Frank F. Caruso

Government Records Council

Executive Director

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

From: Tom Paciorkowski <tom@paciorkowski.net>
Sent: Monday, November 17, 2025 9:55 AM
To: Government Records Council [DCA] <Government.Records@dca.nj.gov>
Cc: Sean Gallagher <SeanG@icnj.org>; Jeremy Jacobsen <JJacobsen@icnj.org>; Rossi, Maria [DCA] <Maria.Rossi@dca.nj.gov>; Thomas Paciorkowski <tpaciorkowski@sarnolawfirm.com>
Subject: [EXTERNAL] RE: Request for Clarification – GRC Policy on Service of Denial of Access Complaints (Chandra v. City of Jersey City, GRC Complaint No. 2025-316)

Dear Mr. Caruso,

Thank you for your email of November 12. While my initial inquiry focused on whether Jersey City's blanket refusal to accept GRC complaints directly from complainants is consistent with the GRC's regulations—which expressly require complainants to transmit the complaint to both the GRC and the custodian—your response has revealed an even more troubling circumstance: that the GRC has adopted an internal practice that does not follow its own duly promulgated regulations or its own official complaint form.

Respectfully, your response contains several significant legal and logical defects. I address the issues in order:

1. Your interpretation ignores the plain language of the regulation.

N.J.A.C. 5:105-2.3(a) states that the complaint process “is initiated when the complainant submits a completed Denial of Access Complaint ... to the Council and custodian.”

This is a mandatory condition precedent. The process begins only when both submissions occur.

Your position—that the absence of the word “shall” converts this requirement into an optional courtesy—finds no support in any principle of regulatory interpretation. Under that logic, every directive in the regulations lacking “shall,” including submission to the GRC itself, would also be optional. That is not how regulations are interpreted.

2. Your interpretation directly conflicts with the GRC's own sworn complaint form.

The GRC's official “Denial of Access Complaint” form requires complainants to affirm under penalty of perjury: “I am simultaneously providing a copy of this complaint to the Custodian of Records.”

Your interpretation—that complainant service is not required—cannot be reconciled with the fact that every complainant must swear under penalty of perjury that they *are* simultaneously serving the custodian.

The GRC's reading creates a direct conflict between the regulation and the form, something administrative law does not permit.

3. The GRC cannot replace the regulation and form with an informal “practical interpretation.”

You state that the GRC's "historical application" and "practical interpretation" justify its current approach.

That position is flatly foreclosed by the New Jersey Supreme Court. In *In re CAFRA Permit No. 87-0959-5*, 152 N.J. 287, 308 (1997), the Court held that agencies are bound by their duly promulgated regulations until amended or repealed, and may not override them through internal custom or convenience.

If the GRC believes the regulation should function differently from its text and its sworn complaint form, the proper vehicle is formal notice-and-comment rulemaking under the Administrative Procedure Act—not reinterpretation by email.

4. The Appellate Division has already interpreted the regulation as requiring service.

The Appellate Division expressly described the regulatory scheme as one requiring service: "The complaint, any amended complaint, and the public agency's responses to a complaint must be served on the GRC and all parties." (*In re Adoption of N.J.A.C. 5:105-1.6(a)(1)* (App. Div. Aug. 12, 2024)).

Agencies do not have discretion to disregard judicial construction simply by labeling it "dicta."

5. Municipalities also have a moral, ethical, and public-trust duty to follow administrative regulations.

Public bodies in New Jersey are bound by the public-trust doctrine and the ethical mandates embedded in the Local Government Ethics Law.

A municipality cannot selectively disregard an administrative regulation because it deems it inconvenient. Jersey City's policy—refusing to accept complainant service "in this case or any case going forward"—undermines good-government principles and disproportionately harms unrepresented OPRA requestors.

Request for Formal Clarification

Considering all the points raised above, and the fact that the official GRC complaint form requires a complainant to affirm under penalty of perjury that they are "simultaneously providing a copy of this complaint to the Custodian of Records," is it still the GRC's official position that a complainant is not required to submit a completed Denial of Access Complaint to the custodian?

If it is still the GRC's policy not to require complainants to serve a copy of the complaint on the custodian, how does the GRC square that policy with the requirement on its official complaint form that complainants swear under penalty of perjury that they do?

A clear, direct answer is respectfully requested so that complainants, custodians, and municipalities may follow the GRC's rules consistently and in good faith.

Respectfully,
Thomas Paciorkowski, Esq.
Attorney for Complainant, Maureen Chandra

From: Government Records Council [DCA] [mailto:Government.Records@dca.nj.gov]
Sent: Monday, November 17, 2025 12:02 PM
To: Tom Paciorkowski <tom@paciorkowski.net>
Cc: Sean Gallagher <SeanG@jcnj.org>; Jeremy Jacobsen <JJacobsen@jcnj.org>; Rossi, Maria [DCA] <Maria.Rossi@dca.nj.gov>; Thomas Paciorkowski <tpaciorkowski@sarnolawfirm.com>
Subject: RE: Request for Clarification – GRC Policy on Service of Denial of Access Complaints (Chandra v. City of Jersey City, GRC Complaint No. 2025-316)

Mr. Paciorkowski,

The GRC has answered your questions in depth, already addressed the points raised in your third e-mail, and provided you a clear and succinct answer to your question in its prior e-mail below.

Please be guided accordingly.

Sincerely,

Frank F. Caruso

Government Records Council

Executive Director

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>