



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 26, 2022 Government Records Council Meeting**

Jeffrey Goodwin  
Complainant

Complaint No. 2020-173

v.

Borough of Woodlynne (Camden)  
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 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. 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).
2. The Custodian’s response was insufficient because he failed to address the Complainant’s preferred method of delivery, which was via e-mail. N.J.S.A. 47:1A-5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
3. Notwithstanding the Custodian’s “deemed” denial, the Complainant’s OPRA request is invalid because it fails to seek identifiable government records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) and Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian did not unlawfully deny access to the Complainant’s request. N.J.S.A. 47:1A-6.
4. Although the Custodian provided an insufficient response to the Complainant’s request and failed to timely respond to the request in violation of N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the evidence of record reveals that the Custodian did not unlawfully deny the Complainant access to the requested records. Additionally, the

evidence of record does not indicate that the Custodian's violation of OPRA was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

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 26<sup>th</sup> Day of April 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: April 28, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Jeffrey Goodwin**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2020-173**

v.

**Borough of Woodlynne (Camden)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of “notes, emails, correspondence other information from December 26, 2019 through June 17, 2020 relating to Ryan Dubiel which reviewed and/or allowed him to be patrolling the streets.”

**Custodian of Record:** Luis Pastoriza

**Request Received by Custodian:** June 18, 2020

**Response Made by Custodian:** September 3, 2020

**GRC Complaint Received:** September 16, 2020

**Background**<sup>3</sup>

**Request and Response:**

On June 18, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 3, 2020, the fifty-fourth (54<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing, denying the Complainant’s request by referencing N.J.S.A. 47:1A-3(a).

**Denial of Access Complaint:**

On September 16, 2020, 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 June 18, 2020. The Complainant further stated that on September 3, 2020, he received a voicemail message on his cell phone informing him the response to his request was ready. The Complainant stated that between the date he submitted his request and the date the voicemail message was left on his cell phone, the Custodian failed to acknowledge receipt of the

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> 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.

Complainant's request, seek an extension of time to respond, or otherwise attempt to communicate with him.

The Complainant stated that in the response the Custodian denied his request by referencing N.J.S.A. 47:1A-3(a) and informing him that there is an ongoing investigation. The Complainant stated that he is not aware of any investigation of the Borough of Woodlynne or any of its police employees. The Complainant asserted that the Custodian had approximately eleven (11) weeks to respond to his request, and that it should not have taken that much time to respond if the Custodian intended to use an on-going investigation as the reason for denial.

#### Statement of Information:

On September 29, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he was represented by legal counsel; however, no letter of representation was received by the GRC. The Custodian certified that he received the Complainant's OPRA request on June 18, 2020, and prepared a written response to the request on August 27, 2020. The Custodian certified that the Complainant "picked up" the response on September 3, 2020. The Custodian certified that the records responsive to the request are "NOTES OF WHO ALLOWED OFFICER TO PATROL" (emphasis in original). The Custodian certified that this matter involves a police officer in a police involved shooting that is under investigation by the local police department and the Camden County Prosecutor's Office.

The Custodian certified that he did not search for the requested records because the records are exempt from access pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3, and N.J.S.A. 47:1A-10. The Custodian further certified that the requested records relate to an ongoing investigation of a police officer.

### Analysis

#### Timeliness

Unless a shorter time period is otherwise provided, a custodian must 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 accordingly 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).<sup>4</sup> 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 Custodian certified that he received the Complainant's OPRA request on June 18, 2020, and prepared a written response on August 26, 2020. The Custodian further certified that

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<sup>4</sup> 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.

the Complainant picked up the response on September 3, 2020. Although the Complainant asked for an e-mail response, there is nothing in the evidence of record to indicate that the Custodian attempted to e-mail, or otherwise deliver the response to the Complainant prior to September 3, 2020, which was the fifty-fourth (54<sup>th</sup>) business day following the Custodian's receipt of the request.

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.

### **Insufficient Response**

The GRC previously adjudicated complaints in which a custodian did not address the preferred method of delivery. In Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014), the complainant identified his preferred method of delivery as "electronic copies on compact disc or USB drive." The custodian timely responded but did not address the complainant's preferred method of delivery. The Council, relying on its past decision in O'Shea v. Twp of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008) (stating "[a]ccording to [the] language of N.J.S.A. 47:1A-5(g), the [c]ustodian was given two ways to comply and should have, therefore, responded acknowledging the [c]omplainant's preferences with a sufficient response for each."), held that the custodian's response was insufficient. See also Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008) (holding that although the custodian timely responded granting access to the requested record, the custodian's response was insufficient because she failed to address the preferred method of delivery); Wolosky v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2009-194 (Interim Order dated August 24, 2010) (holding that the custodian's response was insufficient because he did not address the complainant's preferred method of delivery).

Here, the Complainant sought access to the responsive records via e-mail. However, the Complainant stated that on September 3, 2020, he received a voicemail message on his cell phone from the Custodian informing him the response to his request was ready. The Custodian certified that the Complainant "picked up" the response on September 3, 2020. There is nothing in the evidence of record to indicate that the Custodian attempted to e-mail the response to the Complainant. Moreover, at no point in the Custodian's response does he address the Complainant's preferred method of delivery. Therefore, consistent with the Council's decision in Delbury, GRC 2013-240, the Custodian's response was insufficient.

Accordingly, the Custodian's response was insufficient because he failed to address the Complainant's preferred method of delivery, which was via e-mail. N.J.S.A. 47:1A-5(g); Delbury, GRC 2013-240.

## Unlawful Denial of Access

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. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. 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.

OPRA also provides that:

[w]here it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA] may be denied if the inspection, copying or examination of such record or records shall be *inimical to the public interest*; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced.

[N.J.S.A. 47:1A-3(a) (emphasis added).]

Here, the Custodian certified that the records responsive to the request were notes concerning who allowed an officer to patrol. The Custodian certified that the records were denied in their entirety because the records are related to an ongoing investigation pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3(a) and N.J.S.A. 47:1A-10. The Custodian did not explain in the SOI how N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10 are applicable as reasons for denying access. As such, the GRC cannot accept the Custodian’s reliance upon N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10 as reasons for denying access to the records.

With respect to N.J.S.A. 47:1A-3(a) as a reason for denying access to the requested records, the Custodian did not submit any competent, credible evidence that the records requested by the Complainant are part of any ongoing investigation(s). Moreover, the Custodian failed to certify that disclosure of the records would jeopardize the ongoing investigation(s) or were otherwise inimical to the public interest if disclosed. And because this provision of OPRA only allows denial of access if the requested records are inimical to the public interest, the Custodian cannot rely upon N.J.S.A. 47:1A-3(a) to deny access to the records.

Although the Custodian’s SOI is seriously deficient and fails to meet his burden of proving that the denial of access was lawful, the Council is permitted to raise additional defenses regarding the disclosure of records *sua sponte* pursuant to Paff v. Twp. of Plainsboro, Docket No. A-2122-05T2 (App. Div. 2007), *certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007).<sup>5</sup> In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian’s cited basis for denial was lawful. The court held that:

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<sup>5</sup> On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006). [unpublished]

[t]he GRC has an independent obligation to ‘render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian’s initial determination; it is charged with determining if the initial decision was correct.

[Id.]

In the instant complaint, it was unnecessary for the Custodian to disclose any of the requested records because the Complainant’s request is invalid under OPRA. The request is invalid because it fails to seek identifiable government records.

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

[MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division’s records custodian to manually search through all of the agency’s files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added)].

The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency’s files.” Id.* at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>6</sup> N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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<sup>6</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Furthermore, regarding requests for communications, including e-mails and written correspondence, the GRC has established criteria deemed necessary under OPRA to request them. In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).

Here the Complainant sought e-mails and other correspondence for a specific range of dates; however, he failed to specify (1) the content and/or subject of the e-mail, and (2) the identity of the sender(s) and/or the recipient(s). Stating that the correspondence is “relating to” an individual does not satisfy the latter requirement in accord with Elcavage, GRC 2009-07 because “relating to” is vague and still requires a significant judgement call. Moreover, seeking “other information” educes any number of unspecified records that the Custodian could not be expected to search for and retrieve. The Complainant further qualified his request by seeking records which “allowed [the officer] to be patrolling the streets.” Locating such records would require the Custodian to conduct research to select only certain records from the universe of records that may be responsive.

Therefore, notwithstanding the Custodian’s “deemed” denial, the Complainant’s OPRA request is invalid because it fails to seek identifiable government records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders, 390 N.J. Super. 166; Schuler, GRC 2007-151 and Elcavage, GRC 2009-07. Thus, the Custodian did not unlawfully deny access to the Complainant’s request. N.J.S.A. 47:1A-6.

### **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]. . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed,



knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian provided an insufficient response to the Complainant's request and failed to timely respond to the request in violation of N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the evidence of record reveals that the Custodian did not unlawfully deny the Complainant access to the requested records. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. 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).
2. The Custodian's response was insufficient because he failed to address the Complainant's preferred method of delivery, which was via e-mail. N.J.S.A. 47:1A-5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
3. Notwithstanding the Custodian's "deemed" denial, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) and Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.
4. Although the Custodian provided an insufficient response to the Complainant's request and failed to timely respond to the request in violation of N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the evidence of record reveals that the Custodian did not unlawfully deny the Complainant access to the requested records. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of

a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

April 19, 2022