



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. 2020-175

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, because the requested police patrol schedules contain assignments of police personnel and staffing levels, the records are exempt from access as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property pursuant to N.J.S.A. 47:1A-1.1. Therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6. See Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (Interim Order dated May 24, 2011).
4. Although the Custodian provided an insufficient response to the Complainant’s request and failed to timely respond to the Complainant’s 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. 2020-175**

v.

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

**Records Relevant to Complaint:** Copies via e-mail of “Police Patrol Schedules from December 26, 2019 through June 17, 2020.”

**Custodian of Record:** Luis Pastoriza

**Request Received by Custodian:** June 17, 2020

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

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

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

**Request and Response:**

On June 17, 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-fifth (55<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing, denying the Complainant’s request by informing him that the requested records contain “[s]ecurity measures and surveillance techniques which, if disclosed, would create a risk to the safety or (sic) persons, property, electronic data or software.”

**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 17, 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 the Custodian denied his request because the information he requested, if disclosed, would create a risk to the safety of persons or property. The Complainant stated that the schedules he requested are fluid and would not provide any pattern; therefore, the release of information regarding who was previously patrolling the streets could not create a risk of harm. The Complainant stated that the Custodian's reason for denial is a "poor ruse to deny [his] request." 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 a security/harm risk 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 17, 2020, and prepared a written response to the request on or before August 27, 2020. The Custodian certified that the Complainant "picked up" the response on September 3, 2020. The Custodian certified that the denied record was a "POLICE PATROL SCHEDULE" (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 and N.J.S.A. 47:1A-3. The Custodian certified that the requested records relate to a police officer shooting. The Custodian further certified, "ALSO SECURITY MEASURE (sic) AND SURVEILLANCE TECHS; IF DISCLOSED, WOULD CREATE RISK." (Emphasis in original).

### 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).

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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.

Here, the Custodian certified that he received the Complainant's OPRA request on June 17, 2020, and prepared a written response on or before August 27, 2020. The Custodian further certified that 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-fifth (55<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:

A government record shall not include the following information which is deemed confidential . . . security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software[.]

[N.J.S.A. 47:1A-1.1]

OPRA further 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 requested records were denied in their entirety because the records relate to an ongoing investigation pursuant to N.J.S.A. 47:1A-3. However, 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.

However, the Custodian also stated that the requested records would reveal security measures that, if disclosed, would create a risk. The Custodian cited N.J.S.A. 47:1A-1.1 as a reason for denying access to the records.

In Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (Interim Order May 24, 2011), the complainant requested police daily duty logs. The Council found that duty logs contained details of the assignments of police personnel, surveillance techniques, and staffing levels, and if disclosed, could pose a risk to the safety of police personnel

as well as civilians. The Council therefore held that the requested records were exempt from access as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property pursuant to N.J.S.A. 47:1A-1.1.

Here, the Complainant is seeking police patrol schedules. Such schedules will reveal assignments of police personnel and staffing levels. These records are similar to the police duty logs held to be exempt from access in Rivera, GRC 2009-317. As such, the requested records are exempt from access under N.J.S.A. 47:1A-1.1, as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property.

Accordingly, notwithstanding the Custodian's "deemed" denial, because the requested police patrol schedules contain assignments of police personnel and staffing levels, the records are exempt from access as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property pursuant to N.J.S.A. 47:1A-1.1. Therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6. See Rivera, GRC 2009-317.

### **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 Complainant's 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, because the requested police patrol schedules contain assignments of police personnel and staffing levels, the records are exempt from access as security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property pursuant to N.J.S.A. 47:1A-1.1. Therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6. See Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (Interim Order dated May 24, 2011).
4. Although the Custodian provided an insufficient response to the Complainant's request and failed to timely respond to the Complainant's 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  
Staff Attorney

April 19, 2022