



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

May 20, 2025 Government Records Council Meeting

Naeem Akhtar
Complainant

Complaint No. 2022-227

v.

City of Trenton (Mercer)
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council (“Council”) considered the May 13, 2025, 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. Both the original and current Custodians’ failure to provide a completed Statement of Information to the GRC, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the original and current Custodians’ failure to respond obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian” N.J.S.A. 47:1A-7(b).
2. The original 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 original 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 requests 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 dated October 31, 2007).
3. The original Custodian unlawfully denied access to the Complainant’s OPRA request under N.J.S.A. 47:1A-1.1. Thus, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific lawful basis for denying access to any of the responsive records; or 3) certify if no responsive records to the subject OPRA request exist.
4. **The Custodian shall comply with conclusion No. 3 above within ten (10) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

5. The Council defers analysis of whether the original and/or current Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 20th Day of May 2025

John A. Alexy, 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: May 22, 2025

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 20, 2025 Council Meeting**

**Naeem Akhtar¹
Complainant**

GRC Complaint No. 2022-227

v.

**City of Trenton (Mercer)²
Custodial Agency**

Records Relevant to Complaint: Electronic copy of a “[l]ist of active (not retired) Trenton Police Officers.”

Custodian of Record: Brandon Garcia³

Request Received by Custodian: March 24, 2022

Response Made by Custodian: None.

GRC Complaint Received: May 27, 2022

Background⁴

Request and Response:

On March 24, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The original Custodian did not provide a written response.

Denial of Access Complaint:

On May 27, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the original Custodian did not respond to his OPRA request within the statutorily mandated time frame.

Statement of Information:

On June 6, 2022, the GRC requested a completed Statement of Information (“SOI”) from the original Custodian. On June 16, 2022, the GRC sent a “No Defense” letter to the original

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The original Custodian of Record was Matthew Colon.

⁴ 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.

Custodian requesting a completed SOI within three (3) business days of receipt. The GRC noted that the original Custodian's failure to submit an SOI could lead to an adjudication based solely on the Complainant's submission pursuant to N.J.A.C. 5:105-2.4(f).

On March 20, 2025, the GRC again requested a completed SOI from the Custodian within five (5) business days of receipt, again noting that the Custodian's failure to submit same could lead to an adjudication based solely on the Complainant's submission.

Analysis

Failure to Submit SOI

In furtherance of the GRC's obligation to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to government records[.]" pursuant to N.J.S.A. 47:1A-7(b), it requires a custodian to submit a completed SOI.

The New Jersey Administrative Code provides:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than 10 business days from the date of receipt of the SOI form from the Council's staff. Custodians must sign the SOI Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(g).]

In Alterman, Esq. v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian's failure to adhere to N.J.A.C. 5:105-2.4(a). See also Kovacs v. Irvington Police Dep't (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the GRC sent an SOI request to the original Custodian on June 6, 2022. On June 16, 2022, after the expiration of the ten (10) business day deadline, the GRC sent the original Custodian a "No Defense" letter providing him an additional three (3) business days to submit the requested SOI. The GRC noted that the original Custodian's failure to submit an SOI could lead to an adjudication based solely on the Complainant's submission pursuant to N.J.A.C. 5:105-2.4(f).

On March 20, 2025, the GRC again requested a completed SOI from the Custodian within five (5) business days of receipt, noting again that the Custodian's failure to submit same could lead to an adjudication based solely on the Complainant's submission. To date, the GRC has not received a completed SOI, or other response, from either Custodian.

Accordingly, both the original and current Custodians' failure to provide a completed SOI to the GRC, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the

original and current Custodians' failure to respond obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian." N.J.S.A. 47:1A-7(b).

Timeliness

OPRA mandates that a custodian must either 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 within the required seven (7) business days 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). 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 dated October 31, 2007).

In the matter before the Council, the Complainant submitted his OPRA request on March 24, 2022, and did not receive a response. Based on this, and the lack of any evidence or SOI argument to the contrary, the evidence of record supports that the subject OPRA request was considered "deemed" denied.

Based on the foregoing, the original 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 original 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 requests pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

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.

In the instant matter, the Complainant's OPRA request sought the names of all active Trenton Police Officers as of the date of the OPRA request. There is evidence in the record to show that the original Custodian received the Complainant's OPRA request, as it was designated Reference No. OPR-2022-00409 by the City of Trenton. However, the original Custodian did not respond to the OPRA request. Further, both the original and current Custodian failed to submit an SOI explaining why the requested records were not disclosed. The record is also void of any evidence to show that the requested records are exempt from disclosure under OPRA. Instead, N.J.S.A. 47:1A-10 specifically identifies a public employee's "name" as a "government record" disclosable under OPRA. For these reasons, the GRC finds that the original Custodian unlawfully denied access to the requested records.

Accordingly, the original Custodian unlawfully denied access to the Complainant's OPRA request under N.J.S.A. 47:1A-1.1. Thus, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific lawful basis for denying access to any of the responsive records; or 3) certify if no responsive records to the subject OPRA request exist.

Knowing & Willful

The Council defers analysis of whether the original and/or current Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Both the original and current Custodians' failure to provide a completed Statement of Information to the GRC, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the original and current Custodians' failure to respond obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian" N.J.S.A. 47:1A-7(b).
2. The original 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 original 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 requests 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 dated October 31, 2007).
3. The original Custodian unlawfully denied access to the Complainant's OPRA request under N.J.S.A. 47:1A-1.1. Thus, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific lawful basis for denying access to any of the responsive records; or 3) certify if no responsive records to the subject OPRA request exist.
4. **The Custodian shall comply with conclusion No. 3 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵**

⁵ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷

5. The Council defers analysis of whether the original and/or current Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Jennifer C. Howell
Staff Attorney

May 13, 2025

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.