



State of New Jersey

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FINAL DECISION

June 24, 2025 Government Records Council Meeting

Mark Lindros
Complainant

Complaint No. 2022-255

v.

NJ Division of Law
Custodian of Record

At the June 24, 2025, public meeting, the Government Records Council (“Council”) considered the June 17, 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 the Custodian has borne her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The Custodian’s extensions of time to respond to the Complainant’s request were reasonable and not unduly excessive based upon the totality of the circumstances. See Rodriguez v. Kean Univ., GRC Complaint No. 2016-87 (April 2018).

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 24th Day of June 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: June 26, 2025



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 24, 2025 Council Meeting**

**Mark Lindros¹
Complainant**

GRC Complaint No. 2022-255

v.

**New Jersey Division of Law²
Custodial Agency**

Records Relevant to Complaint:

March 17, 2022 OPRA request: Electronic copies via e-mail of “any and all communications (e-mails, text messages, and any other written communication related to this request whether on a private or a public account) . . . between Sadia Ahsanuddin (or any other employee of the New Jersey Attorney General’s Office) and [39 named individuals]” related to “the ethics case currently pending before the [Office of Administrative Law (“OAL”)]/School Ethics Commission (Docket No.: EEC 15476-2019 S) regarding Eric Hibbs, superintendent of Marlboro Township Public Schools [(“MTPS”)]” between February 26, 2019 and March 11, 2022

March 18, 2022 OPRA request: Electronic copies via e-mail of “any and all communications (regardless of who initiated) . . . between Sadia Ahsanuddin (or any other employee of the New Jersey Attorney General’s Office) and [39 named individuals]” related to “Eric Hibbs, Michael Ballone, Adam Lindstrom, and [MTPS]” between February 26, 2019 and March 18, 2022

Custodian of Record: Octavia Baker

Request Received by Custodian: March 17, 2022; March 18, 2022

Response Made by Custodian: March 29, 2022; April 12, 2022; April 27, 2022; May 11, 2022; May 25, 2022; June 6, 2022; June 15, 2022

GRC Complaint Received: June 8, 2022

Background³

Request and Response:

On March 17, 2022, the Complainant submitted an Open Public Records Act (“OPRA”)

¹ No legal representation listed on record.

² Represented by Deputy Attorney General (“DAG”) Luke D. Hertzell-Lagonikos. Formerly represented by DAG Michal Czarnecki.

³ 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.

request to the Custodian seeking the above-mentioned records. On March 18, 2022, the Complainant submitted another OPRA request to the Custodian seeking the above-mentioned records. On March 29, 2022, the seventh (7th) business day after receipt of both OPRA requests, the Custodian responded in writing requesting an extension of ten (10) business days. On April 12, 2022, the Custodian requested another extension of ten (10) business days until April 27, 2022, to respond to the OPRA request. On April 27, 2022, the Custodian requested an additional extension of ten (10) business days until May 11, 2022, to respond to the OPRA request. On the same day, the Complainant responded objecting to any further extensions.

On May 11, 2022, the Custodian requested an extension of ten (10) business days until May 25, 2022, to respond to the OPRA request and stated that she anticipated disclosure prior to the expiration of the new deadline. On May 25, 2022, the Custodian requested an additional seven (7) business days to respond to the OPRA request. On the same day, the Complainant responded objecting to another extension of time and stated the Custodian did not give a reason for the additional extension. On June 6, 2022, the Custodian requested an additional seven (7) business days until June 15, 2022, to respond to the OPRA request and stated that she anticipated providing a formal response prior to the expiration of the new deadline.

Denial of Access Complaint:

On June 8, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that the Custodian’s repeated extensions amounted to sixty-one (61) business days and resulted in an unreasonable delay of access. Additionally, the Complainant argued the Custodian did not provide reasons for the requested extensions as required in accordance with the GRC guidelines. The Complainant stated the numerous extensions were “unjust and unfair,” leading him to believe the Division of Law (“Division”) was refusing to provide him with the requested records.

Supplemental Response:

On June 15, 2022, the Custodian responded in writing denying the Complainant’s March 17, 2022 OPRA request. The Custodian stated that on its face, the request seeks access to communications from DAGs related to ongoing litigation not publicly filed with the OAL. The Custodian stated that, under N.J.S.A. 47:1A-9(b) and Drinker, Biddle & Reath, LLP. V. N.J. Dep’t of Law & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 497-98 (App. Div. 2011), unfiled records related to discovery are exempt from disclosure under OPRA. The Custodian also noted that the OPRA request was denied to the extent it sought communications protected by the attorney-client and work-product privileges pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9, and N.J.A.C. 13:1E-3.2(a)(3).

On the same day, the Custodian also responded to the March 18, 2022 OPRA request denying for the reasons identified above.

Statement of Information:

On July 1, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s two (2) OPRA requests on March 18, 2022. The Custodian certified her search included an electronic search of e-mails between the parties named in the requests. The Custodian certified that over 500 pages of responsive records were located and subsequently reviewed to determine if OPRA exemptions or privileges applied. The Custodian certified that she responded in writing on March 29, 2022, requesting an extension of ten (10) business days. The Custodian certified that she subsequently sought extensions of varying lengths on April 12, 2022, April 27, 2022, May 11, 2022, May 25, 2022, and June 6, 2022, with a final deadline date of June 15, 2022. The Custodian certified she received the Denial of Access Complaint on June 15, 2022.

The Custodian certified that on June 15, 2022, she denied the entirety of both OPRA requests under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), N.J.S.A. 47:1A-9(b), N.J.A.C. 13:1E-3.2(a)(3), and Drinker Biddle, 421 N.J. Super. 489. The Custodian argued the extensions were reasonable given the breadth of the request. The Custodian certified the initial search produced nearly 500 pages of e-mails that were reviewed for duplicates and clarity. The Custodian certified the responsive records were pared to 140 pages that then needed review for privileged information. The Custodian noted that the final extension request on June 6, 2022, indicated the Complainant should anticipate a response prior to June 15, 2022. The Custodian maintained that on June 15, 2022, before receiving the instant complaint, the Division responded to the Complainant in writing denying his OPRA requests in their entirety citing the attorney-client privilege exemption under OPRA.

The Custodian argued the complaint should be dismissed as moot because the Division sought timely and reasonable extensions. The Custodian contended the Complainant’s sole argument was that the Division failed to provide a substantive response: the request was “never denied; it has been delayed.” The Custodian argued she was permitted to seek “reasonable” extensions, and so long as a response is provided within the extended time, no “deemed” denial has occurred citing N.J.S.A. 47:1A-5(i). The Custodian stated her June 15, 2022 response was timely as it was sent before the extension expired.

The Custodian maintained that arguments about reasonableness should be rejected in accordance with Ciccarone v. N.J. Dep’t of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). The Custodian argued that the GRC previously found in Rodriguez v. Kean Univ., GRC Complaint No. 2018-215 (Final Decision dated April 28, 2020) that a 38-day extension was not unreasonable where 173 pages had to be reviewed for potential redactions. The Custodian maintained that the Complainant’s request was similarly complex on its face because he sought “any and all” communications between an identified Deputy Attorney General, “any other employee of the New Jersey Attorney General’s Office,” and almost forty (40) individuals, some of whom were alleged to be fictitious (*i.e.*, “Penny Lane”).

The Custodian argued that, extensions aside, the request also clearly sought communications sent or received by a Deputy Attorney General pertaining to an ongoing ethics case before the OAL, and thus potentially responsive records would be considered attorney-client

privilege or attorney work product exempt from disclosure under OPRA, citing N.J.S.A. 47:1A-1.1, Mason v. City of Hoboken, 196 N.J. 51, 61 (2008), Gannett N.J. Partners, LP v. Cnty. Of Middlesex, 379 N.J. Super. 205, 218 (App. Div. 2005). The Custodian concluded that, because of the nature of the request and the records sought, the extensions were reasonable and no “deemed” denial of access occurred.

Analysis

Timeliness

OPRA provides that a custodian may request an extension of time to respond to the complainant’s OPRA request, but the custodian must provide a specific date by which he/she will respond. Should the custodian fail to respond by that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5(i).

In Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant’s request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian’s request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. NJ Dep’t of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).

[Id.]

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant’s OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time

[to a specific date] to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

[Id.]

Moreover, in Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant's OPRA request. The Council concluded that because the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the custodian properly requested the extension pursuant to OPRA. See also Rivera, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone, GRC 2013-280, the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a "deemed" denial of access, the Council looked to what was "reasonably necessary."

In the instant complaint, the Custodian sought multiple extensions for the Complainant's OPRA request as follows:

Date of Request for Extension	New Deadline for Response	Reason for Extension
March 29, 2022	"[T]en business day[s]" (or until April 12, 2022)	"[T]o respond to the subject requests."
April 12, 2022	April 27, 2022	"[T]o respond to the subject requests."
April 27, 2022	May 11, 2022	"[T]o respond to the subject requests."
May 11, 2022	May 25, 2022	"[T]o respond to the subject requests."
May 25, 2022	"[S]even business day[s]" (or until June 6, 2022)	"[T]o respond to the subject requests."
June 6, 2022	June 15, 2022	"[T]o respond to the subject requests."

The Custodian extended the response time on six (6) occasions for a total of sixty-one (61) business days. As noted above, a requestor's approval is not required for a valid extension. However, it should be noted that the Complainant twice objected to extensions.

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already had to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to respond effectively to the request.⁴ Id.

⁴ "Extenuating circumstances" could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to

Here, the Complainant's two (2) OPRA requests sought all communications between the Division and forty (40) other individuals regarding an OAL matter for a time period of just over two (2) years. In the SOI, the Custodian affirmed that a search yielded 500 pages of potentially responsive correspondence. The Custodian argued that those 500 pages needed to be reviewed for duplicity and potential redactions since the Complainant was clearly seeking communications regarding an ongoing OAL ethics violation that could be subject to the attorney-client and other related privileges before production.

For further guidance on this complaint, the GRC looks to Rodriguez v. Kean Univ., GRC Complaint No. 2016-87 (April 2018), wherein the Council found that the custodian's extensions were reasonable. In Rodriguez, the Council held that the Complainant's request for "Public Access Files" held by Kean warranted an extension of forty-four (44) business days, as the request produced 437 pages of records that needed to be reviewed for potential redactions. The Council held that the extensions were not unduly excessive based on the totality of the circumstances.

As in Rodriguez, GRC 2016-87, the extensions here are not excessive based on the totality of the circumstances, despite the Complainant's objections. The Custodian timely responding seeking the first extension and responded thereafter prior to the expiration of each providing a time frame⁵ or date certain therefor. Although the Custodian did not provide an explanation for the extensions to the Complainant, the OPRA request on its face lists forty (40) individuals for which correspondence with the DAG's office was sought regarding an active OAL ethics violation over a time period of more than two (2) years. Given the voluminous nature of the request, the amount of records an initial search returned, and the time the Custodian would need to review 500 pages of potentially privileged information, the extensions were warranted and reasonable under the totality of the circumstances.

Therefore, the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The Custodian's extensions of time to respond to the Complainant's request were reasonable and not unduly excessive based upon the totality of the circumstances. See Rodriguez, GRC 2016-87.

The GRC notes that it will not address the Custodian's June 15, 2022 denial because the Complainant did not raise it as an issue thereafter.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The Custodian's extensions of time to respond to the Complainant's request were reasonable and not unduly excessive based upon the totality of the circumstances. See Rodriguez v. Kean Univ., GRC Complaint No. 2016-87 (April 2018).

accommodate the requestor, emergency closure of the custodial agency, or the custodial agency's need to reallocate resources to a higher priority due to *force majeure*.

⁵ The GRC notes that best practices dictate that a custodian provide a specific date on which they will respond, as opposed to a time frame. Such a practice ensures that the parties are aware of the exact last day of an extension.

Prepared By: Maria M. Rossi
Staff Attorney

June 17, 2025