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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
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JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

June 24, 2025 Government Records Council Meeting

Judith V. Burton
Complainant

Complaint No. 2022-297

v.

City of Trenton (Mercer)
Custodian of Record

At the June 24, 2025, public meeting, the Government Records Council (“Council”) considered the June 17, 2025, Supplemental 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 failed to comply with the Council’s February 18, 2025 Interim Order. Specifically, although Custodian’s Counsel submitted a written response, it was untimely, incomplete and did not include the Custodian’s certified confirmation of compliance to the Executive Director.
2. “The complainant shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s February 18, 2025 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the Custodian’s legal obligation to respond to the subject OPRA request has already been determined by the Council and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian failed to timely respond to either OPRA request. N.J.S.A. 47:1A-5(g); 5(i). Further, the Custodian unlawfully denied access to both of the subject OPRA requests. N.J.S.A. 47:1A-6. Also, the Custodian failed to submit a Statement of Information, thereby obstructing the GRC’s ability to adjudicate this complaint. Finally, the Custodian failed to comply with the Council’s February 18, 2022 Interim Order by untimely responding, in part, failing to disclose if responsive records were located or provide a specific lawful basis for denying access to same, and failing to provide the requisite certification of compliance. Although notified of the foregoing by the GRC, the Custodian did not provide any further submissions and has continued to ignore his obligation to comply accordingly. As such, the Custodian’s inaction hindered the GRC’s 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). Accordingly, the Custodian’s actions may have been intentional and deliberate, with knowledge of their wrongfulness. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order 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**

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

**Judith V. Burton¹
Complainant**

GRC Complaint No. 2022-297

v.

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

Records Relevant to Complaint:

OPRA Request No. 1, June 16, 2022: Electronic copies of funding information relating to the improvements to the Ike Williams Recreation Center, including the appropriation of funds, funding sources, funding amounts, and reporting and expenditure requirements.

OPRA Request No. 2, June 22, 2022: Electronic copy of a list and contact information for all active tree service contracts with the City of Trenton (“City”).

Custodian of Record: Brandon Garcia³

Request Received by Custodian: June 16, 2022; June 24, 2022

Response Made by Custodian: No response provided

GRC Complaint Received: June 29, 2022

Background

February 18, 2025 Council Meeting:

At its February 18, 2025 public meeting, the Council considered the February 11, 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, found that:

1. The Custodian’s failure to provide a completed Statement of Information to the Government Records Council (“GRC”), despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond obstructed the Government Records Council 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).

¹ No legal representation listed on record.

² Represented by Assistant City Attorney for the City of Trenton, Palmer J. Richardson, Esq.

³ The Custodian identified in the Denial of Access Complaint was Jermaine Lee.

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests 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 October 31, 2007).
3. The Custodian unlawfully denied access to the Complainant's OPRA requests under N.J.S.A. 47:1A-6. Accordingly, 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 one or both of the subject OPRA requests 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 deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
5. The Council defers analysis of whether the 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.

Procedural History:

On February 20, 2025, the Council distributed its Interim Order to all parties.

On April 9, 2025, the thirty-fourth (34th) business day after receipt of the Council's Order, Custodian's Counsel requested and was granted by the Government Records Council ("GRC") an extension of time to respond to the Interim Order until April 11, 2025.

On April 14, 2025, the Custodian's Counsel responded, in part, to the Council's Interim Order. Custodian's Counsel stated that with regard to OPRA Request No. 1, the Custodian responded to the Complainant on July 8, 2022 stating that there were no responsive records. Counsel stated that Complainant's June 16, 2022 OPRA request was closed on July 11, 2022. Counsel submitted portal pages indicating "Notes to Requestor" in support of these statements.

⁴ 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.

⁵ "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."

⁶ 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.

Counsel thus contended that the Custodian lawfully denied access to this request because no records existed, citing Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Counsel stated that with regard to the Complainant's OPRA Request No. 2, the Purchasing Department closed the request on June 24, 2022 after informing the Complainant that the requested records may have been available on the City's website. Counsel stated that the request was reopened on July 12, 2022 upon realizing that the response provided was improper. Counsel stated that a search is underway to determine if a follow-up response was provided to the Complainant. Counsel submitted verifying documentation of these actions.⁷

On April 17, 2025, the GRC e-mailed the Custodian and Counsel stating that the April 14, 2025 submission was incomplete and did not comply with the Council's Interim Order. The GRC advised it would proceed with the adjudication process.

Analysis

Compliance

At its February 18, 2025 meeting, the Council ordered the Custodian to search for and disclose responsive records located or provide a specific lawful basis for denying access to any of the responsive records. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4.4, to the Executive Director. On February 20, 2025, the Council distributed its Interim Order to all parties, providing the Custodian ten (10) business days to comply with the terms of the Order. Thus, the Custodian's response was due by close of business on March 6, 2025.

On April 9, 2025, the thirty-fourth (34th) business day after receipt of the Council's Order, Custodian's Counsel requested an extension of time to respond to the Interim Order until April 11, 2025. On April 14, 2025, Counsel provided an untimely response, in part, to the Council's Interim Order.

With regard to OPRA Request No. 1, dated June 16, 2022, Counsel stated that the Custodian notified the Complainant on July 8, 2022 that there were no responsive records and closed the request thereafter on July 11, 2022. In support, Counsel provided portal pages showing "Notes to Requestor" without confirmation that same, or any other type of written response, was ever relayed to the Complainant. These pages do not qualify as the requisite certified submission or a written response to the Complainant's OPRA request. Moreover, the record is void of any proof that the presence of these notes triggered an autogenerated response to the Complainant.

With regard to OPRA Request No. 2, dated June 22, 2022, Counsel stated that the Custodian informed the Complainant on June 24, 2022 that the requested records may have been available on the City's website. Acknowledging that this was not a proper response, the Custodian reopened the OPRA request on July 12, 2022. Counsel stated that a "search is currently being

⁷ Custodian's Counsel addressed a third (3rd) OPRA request, dated June 24, 2022, submitted by the Complainant that is not at issue herein.

conducted to determine if a follow-up response” was provided to the Complainant. However, the Custodian did not confirm whether responsive records were located or provide a specific lawful basis for denying access to same. Moreover, the Custodian did not provide certified confirmation of compliance.

Therefore, the Custodian failed to comply with the Council’s February 18, 2025 Interim Order. Specifically, although Custodian’s Counsel submitted a written response, it was untimely, incomplete and did not include the Custodian’s certified confirmation of compliance to the Executive Director.

Council’s February 18, 2025 Interim Order is Enforceable

“The complainant shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s February 18, 2025 Interim Order, which required the Custodian to respond to the subject OPRA request, is enforceable in the Superior Court if the Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law (“OAL”) for the limited purposes described below, the Council emphasizes that the issue as to the Custodian’s legal obligation to respond to the subject OPRA request has already been determined by the Council and thus is not an outstanding issue before the OAL.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly and 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. 1983)); 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)).

Here, the Custodian failed to timely respond to either OPRA request. N.J.S.A. 47:1A-5(g); 5(i). Further, the Custodian unlawfully denied access to both of the subject OPRA requests. N.J.S.A. 47:1A-6. Also, the Custodian failed to submit a Statement of Information, thereby obstructing the GRC's ability to adjudicate this complaint. Finally, the Custodian failed to comply with the Council's February 18, 2022 Interim Order by untimely responding, in part, failing to disclose if responsive records were located or provide a specific lawful basis for denying access to same, and failing to provide the requisite certification of compliance. Although notified of the foregoing by the GRC, the Custodian did not provide any further submissions and has continued to ignore his obligation to comply accordingly. As such, the Custodian's inaction hindered the GRC's 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). Accordingly, the Custodian's actions may have been intentional and deliberate, with knowledge of their wrongfulness. Therefore, this complaint should be referred to the OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's February 18, 2025 Interim Order. Specifically, although Custodian's Counsel submitted a written response, it was untimely, incomplete and did not include the Custodian's certified confirmation of compliance to the Executive Director.
2. "The complainant shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's February 18, 2025 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the Custodian's legal obligation to respond to the subject OPRA request has already been determined by the Council and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian failed to timely respond to either OPRA request. N.J.S.A. 47:1A-5(g); 5(i). Further, the Custodian unlawfully denied access to both of the subject OPRA requests. N.J.S.A. 47:1A-6. Also, the Custodian failed to submit a Statement of Information, thereby obstructing the GRC's ability to adjudicate this complaint. Finally, the Custodian failed to comply with the Council's February 18, 2022 Interim Order by untimely responding, in part, failing to disclose if responsive records were located or provide a specific lawful basis for denying access to same, and failing to provide the requisite certification of compliance. Although notified of the foregoing by the GRC, the Custodian did not provide any further submissions and has continued to ignore his obligation to comply accordingly. As such, the Custodian's inaction hindered the GRC's 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). Accordingly, the Custodian’s actions may have been intentional and deliberate, with knowledge of their wrongfulness. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Jennifer C. Howell
Staff Attorney

June 17, 2025



State of New Jersey

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101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY
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INTERIM ORDER

February 18, 2025 Government Records Council Meeting

Judith V. Burton
Complainant

Complaint No. 2022-297

v.

City of Trenton (Mercer)
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 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. The Custodian’s failure to provide a completed Statement of Information to the Government Records Council, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond obstructed the Government Records Council 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 Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 October 31, 2007).
3. The Custodian unlawfully denied access the Complainant’s OPRA requests under N.J.S.A. 47:1A-6. Accordingly, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific law basis for denying access to any of the responsive records; or 3) certify if no responsive records to one or both of the subject OPRA requests 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 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 18th Day of February 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: February 20, 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
February 18, 2025 Council Meeting**

**Judith V. Burton¹
Complainant**

GRC Complaint No. 2022-297

v.

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

Records Relevant to Complaint:

June 16, 2022 OPRA Request: Electronic copies of funding information relating to the improvements to the Ike Williams Recreation Center, including the appropriation of funds, funding sources, funding amounts, and reporting and expenditure requirements.

June 22, 2022 OPRA Request: Electronic copy of a list and contact information for all active tree service contracts with the City of Trenton (“City”).

Custodian of Record: Brandon Garcia³

Request Received by Custodian: June 16, 2022; June 24, 2022

Response Made by Custodian: No response provided.

GRC Complaint Received: June 29, 2022

Background⁴

Request and Response:

On June 16, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Custodian did not respond to the OPRA request.

On June 24, 2022, the Complainant submitted a second (2nd) OPRA request seeking the above-mentioned records. On the same day, City Clerk employee, Jermaine Lee, allegedly responded verbally stating that the Complainant’s OPRA request would likely be denied because

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Custodian identified in the Denial of Access Complaint was Jermaine Lee.

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.

the information was present on the City’s website. Later that day, the Custodian allegedly responded in writing denying the subject OPRA request.⁵

Denial of Access Complaint:

On June 29, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that she submitted her first (1st) OPRA request with the City Finance Department on June 16, 2022. The Complainant stated that on the same day she received an automated e-mail confirming receipt of her OPRA request but did not otherwise receive a response.

The Complainant stated that she submitted her second (2nd) OPRA request on June 24, 2022. The Complainant asserted that her request was verbally denied by Mr. Lee on the same date. The Complainant asserted that Mr. Lee also advised that the information she was seeking was available on the City’s website. The Complainant noted that despite several search attempts, she was not able to locate the requested information on the City’s website. The Complainant asserted that, shortly after her conversation with Mr. Lee, she “received the denial.”

Statement of Information:

On July 1, 2022, the GRC sent the Custodian a request to file the Statement of Information (“SOI”). Having received no response, the GRC sent a “No Defense” letter to the Custodian on August 4, 2022, requesting a completed SOI within three (3) business days of receipt and noting that failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f). To date, the GRC has not received a response.

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).]

⁵ The record is void of any documentation supporting the June 24, 2022 written denial.

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 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 Custodian on July 1, 2022. On August 4, 2022, after the expiration of the ten (10) business day deadline, the GRC sent the Custodian a "No Defense" letter providing him an additional three (3) business days to submit the requested SOI. The transmission also included a copy of the original SOI letter providing detailed instructions on how to properly submit an SOI. To date, the GRC has not received an SOI from the Custodian.

Accordingly, the Custodian's 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 Custodian's 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 October 31, 2007).

The evidence of record submitted by the Complainant in the instant matter shows that she submitted her first (1st) OPRA request on June 16, 2022. The Complainant received an automated confirmation of receipt from the Custodian on that same date. To date, the Custodian has not provided a written response to this request. The Complainant submitted her second (2nd) OPRA request on June 24, 2022, which she alleges the Custodian denied both verbally and then in writing on that same date. However, the evidence of record does not support that a written response occurred. For these reasons, the subject OPRA requests were considered "deemed" denied.

Based on the foregoing, the GRC finds that the Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests 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 requests sought copies of certain records, including a list of tree service contracts and funding information relating to same. There is evidence in the current record to show that the Custodian received each of Complainant’s OPRA requests but did not disclose any responsive records. Further, the Custodian failed to submit an SOI explaining why the requested records were not disclosed. Thus, the record is void of any evidence to show that the requested records are exempt and not subject to disclosure. For these reasons, the GRC finds that the Custodian unlawfully denied access to the requested records.

Accordingly, the Custodian unlawfully denied access the Complainant’s OPRA requests under N.J.S.A. 47:1A-6. Accordingly, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific law basis for denying access to any of the responsive records; or 3) certify if no responsive records to one or both of the subject OPRA requests exist.

Knowing & Willful

The Council defers analysis of whether the 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. The Custodian’s failure to provide a completed Statement of Information to the Government Records Council, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond obstructed the Government Records Council 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 Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 October 31, 2007).

3. The Custodian unlawfully denied access the Complainant's OPRA requests under N.J.S.A. 47:1A-6. Accordingly, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific law basis for denying access to any of the responsive records; or 3) certify if no responsive records to one or both of the subject OPRA requests 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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
5. The Council defers analysis of whether the 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

February 11, 2025

⁶ 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.

⁷ "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."

⁸ 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.