



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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MIKIE SHERRILL  
*Governor*

DR. DALE G. CALDWELL  
*Lieutenant Governor*

JACQUELYN A. SUÁREZ  
*Commissioner*

### FINAL DECISION

#### January 27, 2026 Government Records Council Meeting

Maria Diamonte  
Complainant

Complaint No. 2022-355

v.

Rutgers University  
Custodian of Record

At the January 27, 2026, public meeting, the Government Records Council (“Council”) considered the January 20, 2026, 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 requested syllabi are exempt from disclosure as pedagogical, scholarly, and/or academic research records of a public higher education institution in New Jersey. N.J.S.A. 47:1A-1.1. The Custodian has thus borne her burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-6. Because the records are exempt from access under N.J.S.A. 47:1A-1.1, the Council need not address whether the records are also exempt as copyrighted documents.
2. The Complainant demanded the Council impose a civil penalty against the Custodian because she alleged the Custodian unlawfully denied her access to the requested records by claiming the records were exempt under the academic records exemption of N.J.S.A. 47:1A-1.1. However, the Council concluded that the Custodian did not unlawfully deny the Complainant access to the requested records. Moreover, there is nothing in the evidence of record to indicate the Custodian acted less than lawfully in denying the Complainant access to the requested records, or that her actions had a positive element of conscious wrongdoing. Therefore, the Custodian’s actions did not constitute a knowing and willful violation of OPRA and 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 27<sup>th</sup> Day of January 2026

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 2, 2026**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 27, 2026 Council Meeting**

**Maria Diamonte<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-355**

v.

**Rutgers University<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via electronic transmission of:

1. “[A]ll syllabi used/created for classes taught by Simon Reich.”
2. “[A]ll syllabi submitted by Simon Reich pre-employment.”
3. “[A]ll syllabi used/created for/classes taught by Ariane Chebel.”
4. “[A]ll syllabi submitted by Ariane Chebel pre-employment.”<sup>3</sup>

**Custodian of Record:** Jewell Battle<sup>4</sup>

**Request Received by Custodian:** April 7, 2022

**Response Made by Custodian:** April 8, 2022

**GRC Complaint Received:** July 21, 2022

**Background<sup>5</sup>**

**Request and Response:**

On April 7, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 8, 2022, the Custodian responded in writing informing the Complainant that request items numbered 1 and 3 are denied as pedagogical records pursuant to N.J.S.A. 47:1A-1.1, and request items numbered 2 and 4 are denied as personnel records pursuant to N.J.S.A. 47:1A-10.

**Denial of Access Complaint:**

On July 21, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on April 7, 2022, she

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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> Request items are numbered as identified on the Records Denied List of the complaint.

<sup>4</sup> The current Custodian of Records is Mary Ann Keys.

<sup>5</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.

submitted her OPRA request to the Custodian. The Complainant stated that the Custodian responded on April 8, 2022, informing her that item numbers 1 and 3 were denied due to the pedagogical exemption and item numbers 2 and 4 were denied due to the personnel exemption. The Complainant's enumerated objections to the Custodian's denials are as follows:

1. The syllabi were used in classes already taught and thus cannot be confidential.
2. The syllabi were posted on the former website of the department and were available in student offices pre-Covid.
3. There is no exemption that covers already distributed materials.
4. These individuals have been working at Rutgers for over 10 years. There is no hiring process going on.
5. The Rutgers Custodian is continually refusing Complainant's OPRA requests without a valid and honest reason.
6. Some departments at Rutgers post their syllabi on the internet.

The Complainant requested the GRC impose civil penalties against the Custodian for a knowing and willful violation of OPRA.

#### Statement of Information:

On August 5, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that upon reviewing the Complainant's request with legal counsel, she determined that both pre-employment and post-employment syllabi are exempt from disclosure based upon OPRA's pedagogical and academic exemption pursuant to N.J.S.A. 47:1A-1.1. The Custodian also certified that said records are exempt from access due to copyright ownership.

The Custodian addressed the Complainant's six (6) objections to the Custodian's reasons for denying access as follows:

1. Syllabi are intended to be distributed to students seeking credit in courses at the University and not for distribution to the public.
2. Publishing syllabi online does not automatically mean that they become government records subject to disclosure. Even if a faculty member chooses to publish their syllabi online, that does not affect the University's analysis under OPRA. The University is required to adhere to OPRA's exemptions. Distribution of syllabi to students enrolled in a course is for their use as an academic tool and not intended to become public.
3. Same as number 2.
4. The Complainant's request does not encompass hiring practices.
5. The Custodian reviews and responds to all public records requests pursuant to OPRA.
6. Same as number 2.

The Custodian certified that syllabi are also exempt from access because they are copyrighted documents. The Custodian certified that faculty members own the copyright to their pedagogical works, including syllabi, which are protected under the University's copyright policies in line with the copyright law of the United States contained in Title 17 of the U.S. Code.

## Analysis

### 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 further provides in relevant part that:

A government record shall not include, with regard to any public institution of higher education, the following information which is deemed to be privileged and confidential: pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to research, development information, testing procedures, or information regarding test participants[.]

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

Here, the Complainant’s OPRA request sought access to syllabi submitted, created and used by certain Rutgers University faculty members. Syllabi is the plural form of syllabus. “The word syllabus . . . is defined by Webster as ‘an outline of a course of study.’”<sup>6</sup> For the academic records exemption of N.J.S.A. 47:1A-1.1 to apply, the request must seek access to a public institution of higher education’s “pedagogical, scholarly, and/or academic research records.”

With respect to the “public institution of higher education” requirement, Rutgers’ authority to operate as a New Jersey university is codified at N.J.S.A. 18A:65-2 and N.J.S.A. 18A:64M-2(c). Therefore, Rutgers qualifies as a “public institution of higher education.”

Next, the GRC must determine whether faculty-prepared syllabi are pedagogical, scholarly and/or academic research records. OPRA does not define or otherwise ascribe any special significance to the word “pedagogical” as used in the statute; therefore, the GRC looks to the usual and customary definition, that being “relating to . . . education and the methods and theory of teaching.”<sup>7</sup> It is clear that a syllabus containing an outline for a course of study relates to a method of teaching. As such, syllabi prepared by faculty and/or prospective faculty members are pedagogical records, exempt from access pursuant to the “pedagogical, scholarly, and/or academic research records” provision of N.J.S.A. 47:1A-1.1.

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<sup>6</sup> Matejka, Ken, and Lance B. Kurke. 1994. “Designing a Great Syllabus.” *College Teaching* 42 (3): 115. <https://doi.org/10.1080/87567555.1994.9926838> (accessed September 17, 2024).

<sup>7</sup> Pedagogical is defined as “of, relating to, or befitting a teacher or education.” <https://www.merriam-webster.com/dictionary/pedagogical>; and “relating to the methods and theory of teaching.” <https://dictionary.cambridge.org/us/dictionary/english/pedagogical> (accessed September 24, 2024).

Accordingly, the requested syllabi are exempt from disclosure as pedagogical, scholarly, and/or academic research records of a public higher education institution in New Jersey. N.J.S.A. 47:1A-1.1. The Custodian has thus borne her burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-6. Because the records are exempt from access under N.J.S.A. 47:1A-1.1, the Council need not address whether the records are also exempt as copyrighted documents.

### **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 that, “[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)); and 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 Complainant demanded the Council impose a civil penalty against the Custodian because she alleged the Custodian unlawfully denied her access to the requested records by claiming the records were exempt under the academic records exemption of N.J.S.A. 47:1A-1.1. However, the Council concluded that the Custodian did not unlawfully deny the Complainant access to the requested records. Moreover, there is nothing in the evidence of record to indicate the Custodian acted less than lawfully in denying the Complainant access to the requested records, or that her actions had a positive element of conscious wrongdoing. Therefore, the Custodian’s actions did not constitute a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The requested syllabi are exempt from disclosure as pedagogical, scholarly, and/or academic research records of a public higher education institution in New Jersey.

N.J.S.A. 47:1A-1.1. The Custodian has thus borne her burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-6. Because the records are exempt from access under N.J.S.A. 47:1A-1.1, the Council need not address whether the records are also exempt as copyrighted documents.

2. The Complainant demanded the Council impose a civil penalty against the Custodian because she alleged the Custodian unlawfully denied her access to the requested records by claiming the records were exempt under the academic records exemption of N.J.S.A. 47:1A-1.1. However, the Council concluded that the Custodian did not unlawfully deny the Complainant access to the requested records. Moreover, there is nothing in the evidence of record to indicate the Custodian acted less than lawfully in denying the Complainant access to the requested records, or that her actions had a positive element of conscious wrongdoing. Therefore, the Custodian's actions did not constitute a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

January 20, 2026<sup>8</sup>

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<sup>8</sup> This complaint was prepared for adjudication at the Council's November 7, 2024 meeting, but could not be adjudicated due to lack of quorum.