



## 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. 2022-388

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. Because the Custodian failed to respond to the Complainant by the extension date anticipated by her, she violated N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of the Complainant’s OPRA request. Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (Interim Order October 31, 2007).
2. The Custodian has borne her burden of proof that she lawfully denied access to records and requirements for a new hire to become a professor at the level of P1. Specifically, the Custodian certified in the Statement of Information that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The Complainant demanded the GRC impose a civil penalty against the Custodian because she alleged the Custodian unlawfully denied her access to the requested records by certifying that responsive records do not exist. However, the evidence of record reveals that the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. Moreover, there is not a scintilla of evidence in the 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. 2022-388**

v.

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

**Records Relevant to Complaint:** Copies of “[a]ny and all records and requirements for a new hire to become a professor at the level of P1.”

**Custodian of Record:** Jewell Battle<sup>3</sup>

**Request Received by Custodian:** March 3, 2022

**Responses Made by Custodian:** March 13, 2022, March 15, 2022, and March 24, 2022, April 7, 2022, April 11, 2022, and April 22, 2022

**GRC Complaint Received:** August 3, 2022

**Background<sup>4</sup>**

**Request and Responses:**

On March 3, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 13, 2022, the sixth (6<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing asking the Complainant to clarify her request. On March 15, 2022, the Complainant clarified the request by stating, “[k]indly provide requirements needed by candidates that are at the P1 level at Rutgers.” On that same date, the Custodian notified the Complainant that she needed an extension of time until March 22, 2022, to respond to the request. On March 24, 2022, the Custodian informed the Complainant that she needed an additional extension of time until March 30, 2022.

On April 7, 2022, the Custodian asked the Complainant what she meant by “P1” in her request. On that same date, the Complainant replied stating, “P1 stands for the designation of ‘Professor 1.’” On April 11, 2022, the Custodian stated that she reviewed the Complainant’s clarification of the request and was requesting an extension of time until April 15, 2022. On April

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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 current Custodian of Records is Mary Ann Keys.

<sup>4</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.

22, 2022, the Custodian responded by informing the Complainant that there are no records responsive to the request.

#### Denial of Access Complaint:

On August 3, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on March 3, 2022, she submitted her OPRA request to the Custodian, and the Custodian responded on April 22, 2022, claiming that the records do not exist. The Complainant stated that she attached a document with an arrow pointing to an individual at the level of professor 1. The Complainant stated that she also attached a salary guide for professors. The Complainant alleged that “[i]t is impossible for the records not to exist.” The Complainant requested the GRC impose civil penalties and disciplinary action against the Custodian.

The Complainant directed the GRC to see the complaint attachments. The Complainant attached to the complaint a “Salary Table: AAUP – Faculty” with two hand drawn arrows pointing to “Professor 1 AY” and “Professor 1 CY,” respectively. The Complainant also attached written communications with the Custodian dated March 3, 2022, March 13, 2022, March 15, 2022, March 24, 2022, April 7, 2022, April 11, 2022, and April 22, 2022.

#### Statement of Information:

On August 18, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 3, 2022, and responded to the request on April 22, 2022. The Custodian certified that she contacted the University’s Human Resources Department, and they confirmed that the P1 or Professor 1 role does exist; however, there are no standard requirements that need to be met by a faculty member to become a P1 or Professor 1. As such, the Custodian certified that no responsive records exist.

#### Additional Submissions:

On August 19, 2022, the GRC e-mailed the Complainant a request for additional information. The GRC informed the Complainant that, because the Custodian certified that no records exist responsive to the request, the GRC required a certification from her submitting any proof that the requested records do exist.

On August 22, 2022, the Complainant replied to the GRC’s request for additional information. The Complainant failed to provide the requested certification. Instead, the Complainant stated that she wanted a certification from the “human resources professional that allegedly searched for the information requested to submit a certification that the information does not exist.”

## 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>5</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).

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. Hardwick v. N.J. Dep't of Transp., GRC Complaint No. 2007-164 (February 2008). Should the custodian fail to respond by that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (Interim Order October 31, 2007), the custodian responded in writing on the fifth (5<sup>th</sup>) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. The custodian then responded on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a "deemed" denial of access to the records.

[Id.]

Here, the Custodian responded to the Complainant's OPRA request on March 13, 2022, the sixth (6<sup>th</sup>) business day following receipt of the request, seeking clarification. The Complainant provided clarification on March 15, 2022, and on that same date the Custodian stated that she needed an extension of time until March 22, 2022. The Custodian failed to respond again until March 24, 2022, which was two (2) business days beyond the extended due date.

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<sup>5</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.

The facts in the instant complaint are similar to the facts Kohn because the Custodian here failed to respond to the Complainant by the extension date she requested. As such, the Custodian violated N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of the request.

Therefore, because the Custodian failed to respond to the Complainant by the extension date anticipated by her, she violated N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of the Complainant’s OPRA request. Kohn, GRC 2007-124.

### **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 Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified in the SOI that the requested records – “records and requirements for a new hire to become a professor at the level of P1” – do not exist. Upon review, the GRC is persuaded that no unlawful denial of access has occurred. There is nothing in the evidence of record that contradicts the Custodian’s certification that no responsive records exist for these request items. Moreover, upon receipt of the SOI the GRC followed up with the Complainant to determine whether she could provide the GRC with proof that the records do exist; however, the Complainant failed to provide the GRC with a responsive reply. Based on the forgoing, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to records and requirements for a new hire to become a professor at the level of P1. Specifically, the Custodian certified in the SOI that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

### **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 GRC impose a civil penalty against the Custodian because she alleged the Custodian unlawfully denied her access to the requested records by certifying that responsive records do not exist. However, the evidence of record reveals that the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. Moreover, there is not a scintilla of evidence in the 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. Because the Custodian failed to respond to the Complainant by the extension date anticipated by her, she violated N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of the Complainant’s OPRA request. Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (Interim Order October 31, 2007).
2. The Custodian has borne her burden of proof that she lawfully denied access to records and requirements for a new hire to become a professor at the level of P1. Specifically, the Custodian certified in the Statement of Information that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The Complainant demanded the GRC impose a civil penalty against the Custodian because she alleged the Custodian unlawfully denied her access to the requested records by certifying that responsive records do not exist. However, the evidence of record reveals that the Complainant failed to submit any competent, credible evidence

to refute the Custodian's certification. Moreover, there is not a scintilla of evidence in the 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>6</sup>

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<sup>6</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.