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JACQUELYN A. SUÁREZ  
Commissioner

## FINAL DECISION

### June 24, 2025 Government Records Council Meeting

Drew Bradford  
Complainant

Complaint No. 2022-395

v.

New Providence Police Department (Union)  
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:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s three (3) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s three (3) 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 thereof 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).
2. The Complainant’s July 25, 2022 OPRA request No. 1, item No. 2, July 25, 2022 OPRA request No. 2, and July 27, 2022 OPRA request are invalid because they require the Custodian to carefully review prior OPRA requests and search supervisors and phone numbers to determine which phone bills are responsive to the requests; to wit, conduct research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Thus, the Custodian lawfully denied access to these OPRA requests. N.J.S.A. 47:1A-6. See also Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. Dec. 10, 2019).
3. The Custodian lawfully denied the Complainant access to July 25, 2022 OPRA Request No. 1, item No. 1, as he sought records that were duplicative of the body-worn camera video provided on a CD on June 30, 2022 in response to his identical OPRA requests submitted days before because disclosure of same “does not advance the purpose of OPRA.” N.J.S.A. 47:1A-6; Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 at 618 (App. Div. 2008); Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg’l

Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (Interim Order dated February 26, 2013).

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 24<sup>th</sup> 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**

**Drew Bradford<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-395**

**v.**

**New Providence Police Department (Union)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies for pick-up of:<sup>3</sup>

July 25, 2022 OPRA request No. 1:

1. "Sgt. Jason Labaska['s] cell phone movements, and statements" from a specific incident on April 28, 2022 when the Complainant was at the New Providence Police Department ("NPPD"), which was "all caught on his body-worn camera [{"BWC"}]."
2. The Complainant's "first request . . . for this information and [Custodian Counsel's] first denial of this with the date" of both the request and denial.

July 25, 2022 OPRA request No. 2: "The phone bill of 2 phone calls . . . Sgt. Jason Labaska made only to me and conversed only to me germaine [sic] to only me and my power of attorney client, my parishioner, and my friend. . . . They are made May 7, 2022 at 7:17 p.m. for 33 minutes and 9:00 p.m. for 21 minutes."

July 27, 2022 OPRA request: "The phone bill from Sgt. Labaska's supervisor's cell phone, germaine [sic] to these two phone calls [from May 7, 2022], including supervisor cell phone #."

**Custodian of Record:** Wendy Barry

**Request Received by Custodian:** July 25, 2022; July 27, 2022

**Response Made by Custodian:** None.

**GRC Complaint Received:** August 9, 2022

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented Paul R. Rizzo, Esq. of DiFrancesco Bateman, P.C. (Warren, NJ).

<sup>3</sup> The Complainant also identified a July 5, 2022 OPRA request as at issue in his complaint; however, he did not include a copy of the OPRA request and did not state any claim therefor. Thus, the GRC will not consider that OPRA request as part of this complaint.

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

### **Request:**

On July 25, 2022, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On July 27, 2022, the Complainant submitted a third (3<sup>rd</sup>) OPRA request to the Custodian seeking the above-mentioned records.

### **Denial of Access Complaint:**

On August 9, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s denial of the requests on the basis that they were repetitive was deficient.<sup>5</sup> The Complainant stated that the subject records are disclosable under OPRA because he was involved in the interactions that precipitated the creation of those records.

The Complainant contended that Sgt. Labaska’s “cell phone movements and texting” from April 28, 2022, during an in-person meeting responsive to his July 25, 2022 OPRA request No. 1 were “OPRA material.” The Complainant contended that Custodian’s Counsel previously denied a similar OPRA request for the text message “[a specific individual] is back,” asserting that no record was maintained by the Borough of New Providence (“Borough”). The Complainant contended that, to the contrary, Lt. Brian O’Malley from Union County’s Internal Affairs confirmed the text existed and was captured on Sgt. Labaska’s BWC. The Complainant contended that he was also advised by Sgt. Rudy Correia, Lt. O’Malley’s partner, that he was supposed to receive that BWC recording. The Complainant argued that this BWC footage is the record he sought, which he asserts will include an image of that text message to prove its existence.

Regarding the OPRA requests for the phone billing records, the Complainant contended that said records were subject to disclosure under Meyers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (May 2006). The Complainant argued that the calls involve him and his “power of attorney client, . . . parishioner, and friend,” and that Sgt. Labaska admitted to using his supervisor’s cell phone. The Complainant contended that he sought the phone bills to verify that Sgt. Labaska made the calls, wherein he made derogatory comments about the Complainant and specific individual.

Additionally, the Complainant argues that Custodian’s Counsel has “a strong conflict of interest with [the Complainant] having prevailed against his law office,” and is bias[ed] in his OPRA denials. The Complainant stated that Custodian’s Counsel was hiding OPRA requests and using “repetition” as an excuse to deny the Complainant’s OPRA requests.

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<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.

<sup>5</sup> The GRC notes that the Complainant included in his Denial of Access Complaint multiple OPRA requests, some of which were similar or identical to the three (3) OPRA request at issue here.

### Statement of Information:

On October 3, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian stated that the instant complaint required an explanation of the relationship between the Complainant and Borough. The Custodian averred that the Complainant engaged the NPPD on numerous occasions regarding a specific individual that began causing interference in the agency’s operations. The Custodian stated that in response to this campaign of contact, on May 9, 2022, Custodian’s Counsel informed the Complainant (a Borough resident) that the Borough would no longer address any communication he sent to the NPPD about the specific individual unless there existed an actual emergency. The Custodian averred that the Complainant responded by filing a Notice of Intent to Sue and began using OPRA as a tool to harass the Borough. The Custodian noted that the Complainant amended his tort claim twenty-nine (29) times since filing it.

The Custodian certified that, regarding this complaint, it was impossible to discern which OPRA request was at issue in this matter because, since the beginning of 2022, the Complainant filed roughly fifty-one (51) OPRA requests to the Borough. The Custodian stated she limited the SOI to address the following that she determined the complaint covered: two (2) of the four (4) OPRA requests submitted on July 25, 2022; and one (1) OPRA request submitted on July 27, 2022. The Custodian affirmed that, to this end, she received the subject OPRA requests on July 25, 2022, and July 27, 2022.

The Custodian certified that she did not respond to the July 25, 2022 OPRA request No. 1 because it was repetitive. The Custodian argued that Complainant’s July 25, 2022 OPRA request No. 1, item No. 1 was not considered a new OPRA request because the Complainant was previously provided a CD of the BWC footage on June 30, 2022. See Custodian’s “Exhibit K.” The Custodian noted that the Complainant had requested the BWC footage from April 28, 2022, on at least three prior instances before submitting this OPRA request. The Custodian further argued that OPRA request No. 1, item No. 2, was not a proper OPRA request. The Custodian noted that the Complainant already has in his possession his prior OPRA requests and her responses; thus, he can review same to determine when he first submitted an OPRA request for the BWC footage and her response thereto. The Custodian further argued that OPRA did not require the Borough to be the Complainant’s record-keeper.

The Custodian argued that the Complainant’s July 25, 2022 OPRA request No. 2 and July 27, 2022 OPRA request were also not considered new OPRA requests because the Complainant submitted previous identical requests on May 31, 2022 and June 6, 2022. The Custodian stated that these requests were denied as invalid on June 2, 2022 and June 21, 2022, because they failed to provide sufficient information to identify the telephone bills sought, and more specifically did not include either a telephone number or supervisor’s name. The Custodian thus certified that no subsequent response was made to these requests because they were repetitive requests that had previously been denied. See SOI Exhibits “I” and “J.” The Custodian noted that the Complainant appeared to be seeking these bills to evidence that the calls occurred, which was already confirmed in a police report provided to him. See SOI Exhibit “O”. The Custodian argued that these requests, taken together, are evidence of the Complainant using OPRA in a harassing or frivolous manner.

### Additional Submissions:

On October 18, 2022, the Complainant submitted to the GRC a response to the SOI. Therein, the Complainant disputed the Custodian's claim that his July 25, 2022 OPRA request No. 2 and July 27, 2022 OPRA request lacked "sufficient information to identify" the telephone bills sought. The Complainant noted that he included in his Denial of Access Complaint a copy of his telephone bill memorializing the calls. The Complainant further noted that it was his belief that only one (1) supervisor worked the night shift at NPPD. The Complainant also took issue with the Custodian's assertion that Sgt. Labaska acknowledged that he made both calls on May 7, 2022. The Complainant contended that the police report only acknowledged one (1) call. The Complainant cites Livecchia v. Borough of Mt. Arlington, GRC Complaint No. 2008-80 (April 2012), in support of his argument that "redacted government phone bills are allowed as an OPRA accessible document."

The Complainant also disputed that he was using OPRA in a frivolous and harassing manner. The Complainant asserted that he was new to submitting OPRA requests and has some additional issues that made it difficult to get into the process. The Complainant asserted that he was merely trying to correct prior submissions for clarification purposes and that requestors have such a right. The Complainant also argued that the Custodian caused additional confusion by "refusing to match his denials with the corresponding OPRA requests." The Complainant contended that Custodian's Counsel should have assisted him in the spirit of cooperation by disconnecting OPRA request dates from each denial.

On October 20, 2022, Custodian's Counsel submitted a brief sur-reply to the GRC. Therein, Counsel, to resolve the Sgt. Labaska call issue, stated that the police report indicates two (2) phone calls were made. Counsel identified the location of each in the police report. Counsel further stipulated that both calls totaled fifty-four (54) minutes. Counsel noted that the Borough would not be addressing any of the remaining statements from the Complainant's SOI response.

### Analysis

#### 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).<sup>6</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 dated October 31, 2007).

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<sup>6</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.

Here, the Complainant submitted his OPRA requests on July 25 and July 27, 2022, and subsequently filed this complaint asserting that the Custodian failed to respond to them. In the SOI, the Custodian certified that the Borough received the instant OPRA requests on July 25 and July 27, 2022. The Custodian certified that the Borough did not respond to these requests because they did not consider these requests new, but rather considered them identical to numerous requests the Complainant submitted since the beginning of 2022 that were previously denied.

Notwithstanding evidence to support that the subject OPRA requests here were substantially similar to prior requests, OPRA does not relieve a custodian of their obligation to timely respond in such a situation. The GRC notes that OPRA, as amended on September 3, 2024, by P.L. 2024, c. 16, permits a custodian to deny “an identical or substantially similar request.” N.J.S.A. 47:1A-5(g). However, the amendment does not remove the custodian’s obligation to respond in writing to such a request. Thus, because the Custodian certified that she did not respond in writing to the subject OPRA requests, the evidence clearly supports that a “deemed” denial of access occurred.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s three (3) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s three (3) 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 thereof pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

### **Validity of Request**

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division’s records custodian to manually search through all of the agency’s files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases

were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that, “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . . In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>7</sup> N.J. Builders Ass’n v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

An invalid OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; see also Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

July 25, 2022 OPRA request No. 1 item No. 2, July 25, 2022 OPRA request No. 2, and July 27, 2022 OPRA request

With respect to requests requiring research, the distinction between search and research is fact sensitive. That is, there are instances where the very specificity of a request requires only a search. As the Council determined in Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), “a valid OPRA request requires a search, not research . . . what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous [records] to determine if same is responsive: in other words, conduct research.”

Additionally, the court in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), found a request for communications regarding the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176.

Conversely, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC

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<sup>7</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).



Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE's meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant's requests . . .* because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes" from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

[Valdes, GRC 2011-147 *et seq.* (emphasis added) (citing N.J. Builders Ass'n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov't Records Council, GRC Complaint No. 2013-278 (September 2014).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court's rational of what amounted to research supports the Council's decision in Valdes. There, the court reasoned that the plaintiff's request:

[W]ould have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

More recently, in Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. Dec. 10, 2019),<sup>8</sup> the complainant requested docketing records stemming from an appeal of an agency's final decision pertaining to a specific statute. The GRC found the request to be invalid, as it would cause the custodian to conduct research. On appeal, the court found that the request lacked a case name, party name, or docket number. The court also found that the records required the custodian "to search through thousands of cases to identify documents relevant to the request." Slip op. at \*9-10. The court further found that the custodian would have to review each file to determine whether it was applicable to the specific

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<sup>8</sup> Affirmed on appeal from Carter v. N.J. Dep't of Cmty. Affairs, GRC Complaint No. 2016-262 (August 2018).

issue identified by the complainant. The court therefore held that the request was invalid under OPRA.

In the instant matter, the Complainant's July 25, 2022 OPRA request No. 1, item No. 2 sought copies of his "first request . . . for this information" sought in item No 1, meaning copies of his previous OPRA request seeking the same records and the admitted denial from the Custodian. Though the Custodian did not respond to this request, the Custodian contended in the SOI that this request was invalid because the Complainant already received the response sought, and reproducing the OPRA request and Custodian's denial would require her to research over fifty (50) OPRA requests submitted by the Complainant to date. The Custodian argued that the Complainant not only already possessed the record in question but also failed to provide sufficient information to facilitate a response, specifically the record numbers or dates for his request. The evidence of record supports the finding that the July 25, 2022 OPRA request No. 1 item No. 2 is invalid as requiring the Custodian to research all his submitted OPRA requests and produce records already in the Complainant's possession.

Additionally, the Complainant's July 25, 2022 request No. 2 and July 27, 2022 OPRA requests sought phone bills from an unidentified "supervisor's" cell phone showing two (2) phone calls with the Complainant from May 7, 2022. Like the Carter request, both requests require the Custodian to conduct research by searching for all possible supervisors and phone numbers and review each to determine who was the supervisor in question. Notwithstanding, in his sur-reply, the Complainant provided a copy of his own phone bill evidencing the existence of the calls and included the supervisor's phone number. However, the Complainant did not provide the phone number or other identifying information in his possession to the Custodian at the time of either OPRA request for the supervisor's phone bill. The evidence of record confirms that the Complainant possessed the number for which he sought bills yet did not provide to support his OPRA requests. However, in not providing that information as part of either request, they are invalid because they require the Custodian to conduct research of supervisors and phone numbers before attempting to identify responsive records.

Therefore, the Complainant's July 25, 2022 OPRA request No. 1, item No. 2, July 25, 2022 OPRA request No. 2 and July 27, 2022 OPRA request are invalid because they require the Custodian to carefully review prior OPRA requests and search supervisors and phone numbers to determine which phone bills are responsive to the requests; to wit, conduct research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37. Thus, the Custodian lawfully denied access to these OPRA requests. N.J.S.A. 47:1A-6. See also Carter, 2019 N.J. Super. Unpub. LEXIS 2510.

### **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.

New Jersey Courts have provided that “[t]he purpose of OPRA ‘is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.’” Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). In Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008),<sup>9</sup> the Appellate Division looked to the Lafayette Yard case in determining whether a custodian knowingly and willfully violated OPRA by not providing the complainant a record already in his possession. The court held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. Id. at 617. The court reasoned that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. Id. at 618 (citing Lafayette Yard, 183 N.J. at 535).

The court’s decision in Bart, however, turns upon the specific facts of that case. The Council noted in Bart that the custodian certified that copies of the requested record were available at the Housing Authority’s front desk upon simple verbal request by any member of the public. Bart, GRC 2005-145. Moreover, the complainant actually admitted that he was in possession of this record at the time of the OPRA request for the same record. Id.

Additionally, in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg’l Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (Interim Order dated February 26, 2013), the complainant sought access to student discipline reports. The custodian’s counsel responded, indicating that he provided the records in response to a prior OPRA request. The Council held that:

The Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant’s December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to [Bart, 403 N.J. Super. 609].

[Id. at 13.]

Regarding the Complainant’s July 25, 2022 OPRA request No. 1, item No. 1, he sought “cell phone movements, and statements” from a meeting with Sgt. Labaska on April 28, 2022. The Complainant filed this complaint after not receiving a response, arguing that he sought the BWC footage capturing those “movements” and “statements.” In the SOI, the Custodian certified that she previously provided the Complainant with a copy of the BWC on a CD on June 30, 2022. See Custodian’s “Exhibit K.” The Custodian further certified that she responded to identical requests on at least three (3) prior occasions in 2022, noting all records were already provided. The Custodian contended that providing the Complainant with these records again “does not advance the purpose of OPRA.” Bart, 403 N.J. Super. at 618.

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<sup>9</sup> Reversing Bart v. City of Paterson Hous. Auth., GRC Complaint No. 2005-145 (May 2006).

Although the Complainant has not affirmatively established that he possessed the earlier provided records, the intent of the Court's decision in Bart can be applied to the facts of this complaint. Specifically, the records sought in the Complainant's July 25, 2022 OPRA Request No. 1 were disclosed in response to identical OPRA requests the Complainant previously submitted. Also, the facts here are like those in Owoh, GRC 2012-330 in that the timing of the response to the prior OPRA request and submission of the new identical OPRA request were close together. Thus, the Custodian did not unlawfully deny access to this OPRA request item because, as the evidence of record supports, the Complainant had already been provided with a CD of the BWC he sought on June 30, 2022, prior to submitting the instant OPRA request. Requiring the Custodian to again locate, reproduce, and disclose duplicative records does not advance the purposes of OPRA.

Therefore, the Custodian lawfully denied the Complainant access to July 25, 2022 OPRA Request No. 1, item No. 1, as he sought records that were duplicative of the BWC video provided on a CD on June 30, 2022 in response to his identical OPRA requests submitted days before because disclosure of same "does not advance the purpose of OPRA." N.J.S.A. 47:1A-6; Bart, 403 N.J. Super. at 618; Owoh, GRC 2012-330.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's three (3) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's three (3) 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 thereof 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).
2. The Complainant's July 25, 2022 OPRA request No. 1, item No. 2, July 25, 2022 OPRA request No. 2, and July 27, 2022 OPRA request are invalid because they require the Custodian to carefully review prior OPRA requests and search supervisors and phone numbers to determine which phone bills are responsive to the requests; to wit, conduct research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Thus, the Custodian lawfully denied access to these OPRA requests. N.J.S.A. 47:1A-6. See also Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. Dec. 10, 2019).
3. The Custodian lawfully denied the Complainant access to July 25, 2022 OPRA Request No. 1, item No. 1, as he sought records that were duplicative of the body-worn camera video provided on a CD on June 30, 2022 in response to his identical OPRA requests submitted days before because disclosure of same "does not advance the purpose of OPRA." N.J.S.A. 47:1A-6; Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609

at 618 (App. Div. 2008); Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg'l Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (Interim Order dated February 26, 2013).

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