



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

January 27, 2026 Government Records Council Meeting

Kevin Lawrence Conley
Complainant

Complaint No. 2022-438

v.

County of Hudson
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 Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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). However, the GRC declines to order any further action because the Custodian disclosed unredacted copies of all responsive records to the Complainant on September 7, 2022, and as part of the Statement of Information.
2. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), by failing to provide a timely written response to the Complainant’s OPRA request resulting in a “deemed” denial, she provided the Complainant with all records responsive to the request on September 7, 2022. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of 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 27th 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**

**Kevin Lawrence Conley¹
Complainant**

GRC Complaint No. 2022-438

v.

**County of Hudson²
Custodial Agency**

Records Relevant to Complaint: Paper copy of the report made pursuant to N.J.S.A. 19:53C regarding provisional ballots spoiled, void, or invalid for the 2020 election relating to all Hudson County (“County”) Districts.

Custodian of Record: Debra Cuseglio
Request Received by Custodian: November 16, 2021
Response Made by Custodian: September 7, 2022
GRC Complaint Received: August 22, 2022

Background³

Request:

On October 11, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 5, 2021, the Complainant sent a letter to County Clerk E. Junior Maldonado stating that he did not receive a response to his OPRA request within the statutorily mandated time frame, resulting in a “deemed” denial.

Denial of Access Complaint:

On August 22, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he mailed his OPRA request to the Custodian on October 11, 2021, and did not receive a response within seven (7) business days. The Complainant stated that he mailed a follow-up letter with a description of the requested records to the Custodian on November 5, 2021, and did not receive a response. The Complainant contended that thirteen (13) of twenty-one (21) counties “responded to OPRA requests identical

¹ No legal representation listed on record.

² Represented by Assistant County Counsel, Neil J. Carroll, Jr., County of Hudson, Department of Law.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

to the [subject request]” within a reasonable response time of two (2) to twenty-five (25) calendar days.

The Complainant requested that the GRC compel disclosure of the responsive records. The Complainant further argued that, since 76% of all counties responded in a reasonable time frame, the Custodian here knowingly and willfully failed to respond to the subject request and should be assessed the civil penalty under N.J.S.A. 47:1A-11.⁴

Response:

On September 7, 2022, the Custodian responded in writing via U.S. mail providing the Complainant unredacted copies of all records responsive to his OPRA request.

Statement of Information:

On September 26, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Complainant’s October 11, 2021 OPRA request was “never actually received by anyone in the County prior to the filing of [the subject OPRA] complaint.” The Custodian noted that the Complainant’s initial request and subsequent letters were addressed to the Office of the County Clerk rather than to her at the Board of Elections. The Custodian stated that the County did not become aware of the Complainant’s request until receipt of the Complainant’s November 5, 2021 follow-up letter on November 16, 2021, through the County Clerk’s Office. The Custodian stated that, upon receipt of the Denial of Access Complaint, she provided unredacted copies of the responsive records to Custodian’s Counsel, who then mailed them to the Complainant on September 7, 2022.

The Custodian contended that she did not knowingly and willfully fail to respond to the Complainant’s request, but rather the failure was an unintentional oversight resulting from “an office inundated with work.” The Custodian stated that she believed all OPRA requests that were received during the subject time period had been completed. The Custodian asserted that she did not realize that the subject request had “slipped through the cracks” until she received notice of this Denial of Access Complaint.

The Custodian argued that to be subject to a knowing and willful penalty under N.J.S.A. 47:1A-11 requires a finding of conscious wrongdoing or that the failure to comply was intentional or deliberate. The Custodian asserted that her failure to timely respond was the unintentional result of mere oversight, rather than a knowing and willful withholding of information. The Custodian argued that this, coupled with her ultimate compliance with the subject OPRA request, did not warrant the imposition of a financial penalty.

⁴ The Complainant also requested that the GRC refer the complaint to N.J. Attorney General’s Office for a Loudermill hearing pursuant to N.J.A.C. 4:2-3. The GRC notes that while N.J.S.A. 47:1A-11 allows for disciplinary proceedings against an individual “against whom a penalty has been imposed,” it does not provide the GRC express authority to initiate such a process. N.J.S.A. 47:1A-7; 11.

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).⁵ 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).

In the instant matter, the Complainant submitted his OPRA request on October 11, 2021. In the SOI, the Custodian certified that she did not receive the subject OPRA request until November 16, 2021. The Custodian certified that, following receipt of the Denial of Access Complaint, she responded to the Complainant's OPRA request in writing via U.S. mail on September 7, 2022, disclosing unredacted copies of the responsive records to the Complainant at that time, with a copy to the GRC. Thus, the evidence of record indicates that the Custodian failed to respond to Complainant's OPRA request within the statutorily mandated seven (7) business day timeframe, resulting in a "deemed" denial of access.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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, GRC 2007-11. However, the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant on September 7, 2022, and as part of the SOI.

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 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).

⁵ 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.

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)); 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)).

Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) by failing to provide a timely written response to the Complainant's OPRA request resulting in a "deemed" denial, she provided the Complainant with all records responsive to the request on September 7, 2022. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of 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 Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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). However, the GRC declines to order any further action because the Custodian disclosed unredacted copies of all responsive records to the Complainant on September 7, 2022, and as part of the Statement of Information.
2. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), by failing to provide a timely written response to the Complainant's OPRA request resulting in a "deemed" denial, she provided the Complainant with all records responsive to the request on September 7, 2022. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

January 20, 2026⁶

⁶ This complaint was prepared for adjudication at the Council's April 29, 2025 meeting, but could not be adjudicated due to lack of quorum.