



PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

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

JACQUELYN A. SUÁREZ  
*Commissioner*

## FINAL DECISION

### March 25, 2025 Government Records Council Meeting

Qumere McClendon  
Complainant

Complaint No. 2022-477

v.

NJ Office of the Public Defender  
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 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 the Custodian lawfully denied access to the Complainant’s OPRA request seeking copies of records associated with a criminal matter in which he was the named defendant. N.J.S.A. 47:1A-6. Specifically, access to case file records from the N.J. Office of the Public Defender are deemed confidential pursuant to N.J.S.A. 47:1A-5(k) and the Complainant failed to provide any authorization necessary to overcome the exemption. See Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

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 25<sup>th</sup> Day of March 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: March 27, 2025**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 25, 2025 Council Meeting**

**Qumere McClendon<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-477**

**v.**

**N.J. Office of the Public Defender<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of “records” associated with Warrant No. SC2006 013414 issued on two (2) specific dates, executed on two (2) specific dates, and recalled on two (2) specific dates, including the Arrest Warrant and Affidavit in Support of Probable Cause for Summons Complaint, dated June 29, 2006, August 23, 2006 and December 4, 2006.

**Custodian of Record:** Alison Perrone

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

**Response Made by Custodian:** July 29, 2022

**GRC Complaint Received:** September 12, 2022

**Background<sup>3</sup>**

**Request and Response:**

On July 14, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 29, 2022, the Custodian responded in writing denying access to the OPRA request under N.J.S.A. 47:1A-5(k). The Custodian stated that if the requested records pertain to the Complainant’s own case, he should contact the Monmouth County Public Defender, the county in which the Complainant was convicted.

**Denial of Access Complaint:**

On September 12, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access but argued that several other agencies also denied him access. The Complainant did not

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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 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.

include additional statements or arguments identifying the reasons for his dispute in relation to the subject OPRA request.<sup>4</sup>

### Statement of Information:

On October 14, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 25, 2022. The Custodian certified that she responded in writing on July 29, 2022, denying the request under N.J.S.A. 47:1A-5(k).

The Custodian contended that she lawfully denied access to the Complainant’s OPRA request. The Custodian averred that the records sought were part of the N.J. Office of the Public Defender’s (“OPD”) litigation files and are clearly exempt under N.J.S.A. 47:1A-5(k). The Custodian asserted that there is no exception within OPRA to allow an OPD client to obtain access to their own file without a court order or the permission of the State Public Defender. The Custodian cited Gaines v. N.J. Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013) Gaines v. N.J. Office of the Pub. Defender, GRC Complaint No. 2014-313 (March 2015); and Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015), wherein the Council held that OPD’s reliance on N.J.S.A. 47:1A-5(k) constituted a lawful denial, in support of her position here.

## 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 provides that “[t]he files maintained by the [OPD] that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.” N.J.S.A. 47:1A-5(k). See also Gaines, GRC 2012-261 (holding that responsive records relating to OPD’s representation of the complainant were exempt from disclosure under OPRA).

In Lemon, GRC 2015-297, the complainant sought records, including plea forms, related to his own case file. The Council held that based on the plain language of N.J.S.A. 47:1A-5(k), and without evidence of a law, court order, or the State Public Defender authorizing disclosure, the custodian’s denial of access was lawful. See also Shabazz v. N.J. Office of the Pub. Defender, GRC Complaint No. 2017-145 (July 2019).

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<sup>4</sup> The Complainant included additional OPRA and other types of requests that he submitted to the Criminal Division of the Monmouth County Superior Court, the Long Branch Municipal Court and the New Jersey Judiciary. However, the GRC will not address these other requests because the Complainant filed the instant Denial of Access Complaint against the Office of the Public Defender.

In the matter before the Council, the Complainant sought copies of records associated with a criminal matter in which he was the named defendant. The Custodian denied access under N.J.S.A. 47:1A-5(k), stating that the requested records were exempt under OPRA. In the Denial of Access Complaint, the Complainant alleged he was unlawfully denied access to the requested records and noted other attempts to obtain them from various sources. The Custodian subsequently certified in the SOI that the records sought were part of a litigation file. The Custodian further argued that the Complainant provided no evidence of a law, court order, or State Public Defender authorization allowing him access to his records under OPRA. Based on the foregoing, the GRC is satisfied that the Custodian's denial of access was lawful because a plain reading of N.J.S.A. 47:1A-5(k) exempts access to all OPD client records and contains no exceptions for persons attempting to access their own files.

Therefore, the Custodian lawfully denied access to the Complainant's OPRA request seeking copies of records associated with a criminal matter in which he was the named defendant. N.J.S.A. 47:1A-6. Specifically, access to case file records from the OPD are deemed confidential pursuant to N.J.S.A. 47:1A-5(k) and the Complainant failed to provide any authorization necessary to overcome the exemption. See Lemon, GRC 2015-297.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's OPRA request seeking copies of records associated with a criminal matter in which he was the named defendant. N.J.S.A. 47:1A-6. Specifically, access to case file records from the N.J. Office of the Public Defender are deemed confidential pursuant to N.J.S.A. 47:1A-5(k) and the Complainant failed to provide any authorization necessary to overcome the exemption. See Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

Prepared By: Jennifer C. Howell  
Staff Attorney

March 18, 2025