



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

**PHILIP D. MURPHY**  
*Governor*

**TAHESHA L. WAY**  
*Lieutenant Governor*

**JACQUELYN A. SUÁREZ**  
*Commissioner*

**FINAL DECISION**

**January 28, 2025 Government Records Council Meeting**

Monica Smith  
Complainant

Complaint No. 2022-557

v.

Linden Public Library (Union)  
Custodian of Record

At the January 28, 2025, public meeting, the Government Records Council (“Council”) considered the January 21, 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:

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 October 31, 2007).
2. Notwithstanding the “deemed” denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 28<sup>th</sup> Day of January 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: January 30, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 28, 2025 Council Meeting**

**Monica A. Smith<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-557**

**v.**

**Linden Public Library (Union)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the Board of Trustees, Linden Public Library board meeting minutes for: May 31, 2021; June 7, 2021; July 19, 2021; October 4, 2021; November 8, 2021; January 3, 2022; February 7, 2022; March 7, 2022; April 4, 2022; and May 2, 2022.

**Custodian of Record:** Dr. Marlena Berghammer  
**Request Received by Custodian:** October 3, 2022  
**Response Made by Custodian:** October 14, 2022  
**GRC Complaint Received:** October 13, 2022

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

**Request:**

On October 3, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request, which she hand delivered in person to the Custodian at the regular meeting of the Board of Trustees for the Linden Public Library seeking the above-mentioned records.

**Denial of Access Complaint:**

On October 13, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted she did not receive a response from the Custodian in the required seven (7) business days following her October 3 request. The Complainant noted that she believed no minutes could be provided because they do not exist.

**Response:**

On October 14, 2022, the ninth (9<sup>th</sup>) business day after receipt, Board attorney Jill Anne LaZare responded in writing on behalf of the Custodian providing the Complainant a hyperlink

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

<sup>2</sup> Represented by Jeffrey J. Berezny, Esq., of Ruderman & Roth, LLC (Springfield, NJ).

<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.

Monica A. Smith v. Linden Public Library (Union), 2022-557 – Findings and Recommendations of the Executive Director

from the Library's website that publicly posts all video recordings of the board meetings, including the ten (10) meetings that are the subject of Ms. Smith's request.

On October 17, 2022, the Complainant responded clarifying that she asked for "the minutes, not the recordings" from the meetings. Ms. LaZare responded on the same date stating that, "the Board has been short staffed and relying on the video for a true representation of what has transpired at the meetings. There are no meeting minutes."

On October 18, 2022, the Complainant responded in writing stating "I'll happily accept a copy of the videos – which I do not recognize as minutes – provided they include subtitles in English." Ms. LaZare replied in writing reiterating that no written meeting minutes exist. Ms. LaZare explained that pursuant to N.J.S.A. 10:4-14, there are no requirements for written minutes and that the Board voted to accept the video recordings as meeting minutes.

On October 25, 2022, Ms. LaZare responded to another e-mail from the Complainant<sup>4</sup> reiterating that there are no "written" minutes. Ms. LaZare stated she would look into the Complainant's request as to whether the Board can provide subtitles to the videos.

#### Statement of Information<sup>5</sup>:

On April 24, 2023, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request in person at a board meeting on October 3, 2022. The Custodian certified that Ms. LaZare responded in writing on her behalf on October 14, 2022, providing a hyperlink to video recordings of the board meetings in question.

The Custodian affirmed that no written minutes exist. The Custodian certified that Ms. LaZare received an e-mail from the Complainant on October 17, 2022 wherein she contended the OPRA request sought "the minutes, not the recordings." The Custodian certified that Ms. LaZare responded in writing on October 17, 18, and 25, 2022, affirming that written minutes do not exist and that the Board voted to accept the videos as accurate meeting minutes. The Custodian certified Ms. LaZare also advised the Complainant that, pursuant to N.J.S.A. 10:4-14, there are no requirements for written minutes and that "there are minutes in the form of videos which complies with the statute." The Custodian further affirmed that Ms. LaZare informed the Complainant she would investigate as to whether the Board can provide subtitles on the video recordings.

### 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

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<sup>4</sup> The text of this email was not included in the submissions from either party.

<sup>5</sup> On November 22, 2022, this complaint was referred to mediation. On March 22, 2023, this complaint was referred back to the GRC for adjudication.

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 October 31, 2007).

Here, the Complainant submitted her OPRA request on October 3, 2022 and subsequently filed this complaint asserting that the Custodian failed to respond to it. On October 14, 2022, the ninth (9<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded through Ms. LaZare providing a hyperlink to the Library's video recorded board meetings and stating that no written minutes exist. In the SOI, the Custodian certified that she received the subject OPRA request on October 3, 2022, but did not respond in writing until October 14, 2022. Thus, 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 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.

### **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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant's OPRA request sought meeting minutes for ten (10) meetings spanning from May 2021-May 2022. The Custodian responded through Ms. LaZare stating that no written meeting minutes existed but that video recordings of all requested meetings can be found on the Linden Public Library website. Following the filing of this complaint where in the Complainant notes she believed no minutes existed, the Custodian certified in the SOI that no minutes existed.

Upon review, the GRC is persuaded that no unlawful denial of access has occurred. The evidence of record supports the Custodian's position that no responsive records exist. That is, Ms. LaZare advised the Complainant on multiple occasions that no written minutes exist. Further, the Custodian certified to this fact in the SOI. Finally, the Complainant confirmed her belief that no written minutes exist in her complaint filing. Based on the foregoing, a conclusion in line with Pusterhofer is appropriate.

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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.

Accordingly, notwithstanding the “deemed” denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### **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 October 31, 2007).
2. Notwithstanding the “deemed” denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Maria M. Rossi  
Staff Attorney

January 21, 2025