



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

### April 29, 2025 Government Records Council Meeting

Edward Farley Aizen  
Complainant

GRC Complaint No. 2022-558

v.

Willingboro Board of Education (Burlington)  
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 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 original Custodian did not bear his burden of proof that he 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 his burden of proof that the Willingboro Board of Education 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. See N.J.S.A. 47:1A-6; 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 29<sup>th</sup> Day of April 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: May 5, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 29, 2025 Council Meeting**

**Edward Farley Aizen<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-558**

**v.**

**Willingboro Board of Education (Burlington)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via U.S. Mail of “all documents pertaining to N.J.A.C. 6A:32-7.3 [“Mandated student records”].”

**Custodian of Record:** Dr. Stephen Lewis<sup>3</sup>

**Request Received by Custodian:** March 17, 2022

**Response Made by Custodian:** None.

**GRC Complaint Received:** October 17, 2022

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

**Request:**

On March 10, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records.

**Denial of Access Complaint:**

On October 17, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant detailed previous attempts to locate his Willingboro Board of Education (“BOE”) educational records. The Complainant attached two letters from the New Jersey Department of the Treasury (“Treasury”), Division of Revenue and Enterprise Services, advising that, upon review of microfilm reels, no relevant records from the BOE and no destruction requests for student records or anything similar were located. The Complainant also attached a 2021 e-mail chain between himself and Willingboro Special Services Department secretary Phyllis Zullo wherein Zullo stated she was unable to locate any responsive records notwithstanding his appearance on the 1976 graduation list.

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

<sup>2</sup> Represented by George M. Morris, Esq. of Parker McCay, P.A. (Mount Laurel, NJ).

<sup>3</sup> Kelvin Smith was the original custodian of record at the time this complaint was filed but left the agency during the pendency thereof.

<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.

The Complainant stated that he submitted the instant OPRA request seeking his educational records from the BOE. The Complainant argued that, despite a history of communication with the BOE, he did not receive any response to his March 10, 2022 OPRA request. The Complainant contended he was unlawfully denied access to his educational file. The Complainant noted that he heard his records may have been destroyed as the result of a flood but had not been provided any independent proof of this incident. The Complainant requested that the GRC require the BOE to either disclose the requested records or provide an explanation as to when, why, and who destroyed them.

#### Statement of Information:

On February 2, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the original Custodian received the Complainant’s OPRA request on March 17, 2022. The Custodian certified that multiple individuals searched for responsive records but could not locate them. The Custodian certified that no evidence exists that the BOE destroyed the requested records. The Custodian certified that the BOE engaged the Complainant in “numerous communications . . . prior to the filing of the OPRA request, each of which detailed that no documents exist,” but did not provide evidence of any response to the subject OPRA request.

The Custodian argued that, despite diligent search efforts, as acknowledged by the Complainant in his e-mail chain with Ms. Zullo, the Complainant’s educational file has not been located. The Custodian stated that the requested record had a 100-year retention schedule, but that current BOE staff were unable to locate any responsive records, which would be more than 45-years old. The Custodian maintained that the BOE cannot confirm whether any responsive records were destroyed purposefully, accidentally, or through some unplanned event. The Custodian noted that while the Complainant’s name appears on the 1976 graduation list, it is unclear whether that appearance is a result of a standard education or alternate educational route. The Custodian averred that the BOE was unaware that the Complainant’s student records were lost until he began seeking them. The Custodian contended that nothing has changed from the Complainant’s prior requests to the BOE, and that their previous denials were sufficient in showing that no responsive records to this OPRA request exist.

The Custodian also argued that the Complainant’s relief request demanding an explanation from the BOE is beyond the scope of OPRA and the GRC.

#### Additional Submissions:

On February 6, 2023, the Complainant submitted a sur-reply to the Custodian’s SOI. The Complainant first disputed the Custodian’s assertion that he knew no records could be located because Ms. Zullo had previously ended their conversation stating that Special Services was still conducting a search. The Complainant noted that he had twice received his educational record in 1981 and again in 1993. The Complainant contended that it was not until the filing of the SOI that the BOE informed him that his entire file “was destroyed.” The Complainant asserted that he expected to receive the same records he obtained twice before. The Complainant surmised that his

educational file was presumably destroyed at some point after 1993 and possibly between 1995 and 1998.

The Complainant argued that he believed that former BOE employees destroyed his educational file to cover for wrongdoing. Specifically, the Complainant alleged that his educational records provided to him in 1983 and 1993 contained “fraudulent” information surrounding the circumstances of his graduation from high school.<sup>5</sup> The Complainant noted that, because he did not receive the services he was supposed to get from the BOE and did not attend a school therein, his name was obviously on the graduation list due to an alternate educational route. The Complainant maintained that he never graduated from a BOE school and did not obtain a GED until years later.

Finally, the Complainant asserted that he prompted the U.S. Department of Education (“USDOE”) to investigate the BOE in 1995. The Complainant asserted that, as part of their investigative findings, the USDOE stated that his educational files were destroyed in a flood. The Complainant asserted that, in his communications with Treasury, they asked whether he knew of an event “like a flood . . . that may have forced the agency to request disposition of the records.” The Complainant thus contended that he did not fabricate the flood story, and it must have come from either the BOE, the USDOE, or the State government.<sup>6</sup>

## **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>7</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 his OPRA request on March 10, 2022, and subsequently filed this complaint asserting that the Custodian failed to respond to it. In the SOI, the Custodian certified that the BOE received the OPRA request on March 17, 2022. However, the Custodian

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<sup>5</sup> The GRC notes that it has no authority over the contents of a record. N.J.S.A. 47:1A-7(b); Gillespie v. Newark Pub. Sch., GRC Complaint No. 2004-105 (November 2004); Kwanzaa v. Dep’t. of Corr., GRC Complaint No. 2094-167 (March 2005).

<sup>6</sup> The Complainant asked that the current superintendent of the BOE make a formal apology to him and strike his name from the 1976 graduation list. The GRC notes that its authority does not extend beyond a determination of whether a lawful denial of access occurred. N.J.S.A. 47:1A-7. Thus, the GRC does not have the ability to order the relief sought by the Complainant.

<sup>7</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.

failed to provide any evidence demonstrating that the original Custodian responded in writing at any time following receipt of the subject OPRA request.

Therefore, the original Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the original 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 filed this complaint contending that the BOE failed to respond to his OPRA request. Attached to the complaint was an e-mail chain between the Complainant and Ms. Zullo wherein she explained she was unable to locate any records. In the SOI, the Custodian certified that, despite numerous diligent search attempts, the BOE was unable to locate any responsive records to the subject OPRA request.

Upon review, and even though the original Custodian did not timely respond to the instant OPRA request, the Custodian has certified that no responsive records could be located. This SOI certification is supported by the Complainant's submissions, attachments, and acknowledgement that his educational file likely was destroyed. Specifically, the Complainant included the 2021 e-mail chain displaying the BOE's inability to locate responsive records *prior* to him filing this complaint. As the parties are in agreement that no records exist, and no competent, credible evidence suggesting otherwise is present in the record, Pusterhofer applies.<sup>8</sup>

Accordingly, notwithstanding the "deemed" denial of access, the Custodian has borne his burden of proof that the BOE 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. See N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

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<sup>8</sup> The GRC will not address the Complainant's relief request to require the BOE to provide an explanation on the potential destruction of the requested records because retention issues are not within the Council's authority to adjudicate. N.J.S.A. 47:1A-7(b); Toscano v. N.J. Dep't of Labor, Div. of Vocational Rehabilitation Serv., GRC Complaint No. 2007-296 (March 2008).

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The original Custodian did not bear his burden of proof that he 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 his burden of proof that the Willingboro Board of Education 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. See N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Maria M. Rossi  
Staff Attorney

April 15, 2025