



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  
Acting Commissioner

**FINAL DECISION**

**March 26, 2024 Government Records Council Meeting**

Maurice Bronson  
Complainant

Complaint No. 2022-627

v.

Township of Irvington (Essex)  
Custodian of Record

At the March 26, 2024 public meeting, the Government Records Council (“Council”) considered the March 19, 2024 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 has borne his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specially, the Custodian, through a Clerk’s Office employee, responded immediately to the Complainant’s OPRA request extending the response time frame through October 31, 2022. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The 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 extended time frame results in a “deemed” denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. Pursuant to Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015), the Custodian’s method of “whiting out” the redacted information in payroll registers was not a “visually obvious method” showing “the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).
4. The Custodian lawfully denied access to the redacted information within the disclosed payroll registers. N.J.S.A. 47:1A-6. Specifically, OPRA and prior case law supports that employee personal and deduction information is exempt from disclosure under N.J.S.A. 47:1A-10. O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No.

2008-283 (November 2009). See also Whiteside v. Twp. of Little Falls (Passaic), GRC Complaint No. 2021-89 (Interim Order dated February 28, 2023).

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 26<sup>th</sup> Day of March 2024

Robin Berg Tabakin, Esq., 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: April 1, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 26, 2024 Council Meeting**

**Maurice Bronson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-627**

v.

**Township of Irvington (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the salary and overtime information for the Custodian and Mayor from January 1, 2022 through September 15, 2022.

**Custodian of Record:** Harold Wiener  
**Request Received by Custodian:** September 22, 2022  
**Response Made by Custodian:** September 22, 2022  
**GRC Complaint Received:** November 2, 2022

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

**Request and Response:**

On September 22, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, a Clerk’s Office employee responded in writing on behalf of the Custodian stating that the time frame was being extended through October 31, 2022.

**Denial of Access Complaint:**

On November 2, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to disclose responsive records immediately per N.J.S.A. 47:1A-1.1. The Complainant further argued that the Custodian failed to respond within the extended time frame to do so.

**Supplemental Response:**

On January 4, 2023, sub-custodian Shante Barr responded in writing on behalf of the Custodian disclosing two (2) payroll register records covering the time period January 1, 2022

---

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

<sup>2</sup> Represented by Samantha Mendenhall, Esq. (Irvington, 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.

Maurice Bronson v. Township of Irvington (Essex), 2022-627 – Findings and Recommendations of the Executive Director

through September 15, 2022 with redactions for deductions, third party contributions, and personal information.

### Statement of Information:

On January 31, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 22, 2022. The Custodian certified that Clerk’s Office employee responded in writing on his behalf on the same day extending the response time frame through October 31, 2022. The Custodian certified that Ms. Barr responded on his behalf on January 4, 2023 disclosing responsive records with redactions

The Custodian argued that no unlawful denial of access occurred. N.J.S.A. 47:1A-5(c); N.J.S.A. 47:1A-5(g); Vessio v. N.J. Dep’t of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007); Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2008-13 (June 2009); Karakashian v. N.J. Dep’t of Law & Pub. Safety, Div. of Consumer Affairs, Office of Medical Examiners, GRC Complaint No. 2013-121, *et seq.* (November 2013). The Custodian argued that there was no bad faith or unlawfulness in the Township’s actions.

### Additional Submissions:

On January 31, 2023, the Complainant submitted a sur-reply to the SOI. Therein, the Complainant confirmed that he received the disclosed records forty-two (42) business days after the expiration of the extended response time frame. The Complainant contended that said records were heavily redacted without a sufficient lawful basis therefor. The Complainant alleged that he asked the Township of Irvington (“Township”) on multiple occasions to provide a statutory basis for the redactions. The Complainant further alleged that he also informed the Township that it failed to “provide the payroll record” he requested (citing Havlusch, Jr. v. Borough of Allenhurst (Monmouth), GRC Complaint No. 2011-243 (Interim Order dated December 18, 2012) (holding that a “payroll record should include information about an employee’s attendance”).

## 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>4</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).

---

<sup>4</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.

## Immediate Access

Barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).<sup>5</sup> See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of "immediate access" records).

In the instant complaint, the Complainant submitted his OPRA request seeking "immediate access" records, namely "salary and overtime information" on September 22, 2022. On the same day, a Clerk's Office employee responded in writing extending the response time frame. This complaint followed, wherein the Complainant argued that the Custodian violated N.J.S.A. 47:1A-5(e). However, per Herron, GRC 2006-178, the Township's response extending the time frame was immediate. Thus, the Custodian, through the Clerk's Office employee, did not violate OPRA's "immediate access" provision.

Accordingly, the Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specially, the Custodian, through a Clerk's Office employee, responded immediately to the Complainant's OPRA request extending the response time frame through October 31, 2022. N.J.S.A. 47:1A-5(e); Herron, GRC 2006-178.

## Extension of Time

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5<sup>th</sup>) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a "deemed" denial of access to the records.

[Id.]

---

<sup>5</sup> OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that invoices are "immediate access" records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

In this matter, the Complainant submitted his OPRA request on September 22, 2022. As previously noted, the response time frame was extended through October 31, 2022. The Custodian, through Ms. Barr, subsequently responded on January 3, 2023, forty-two (42) business days after the expiration of the extended deadline disclosing two (2) payroll register records with redactions. This complaint followed, wherein the Complainant argued that the Custodian failed to respond within the extended response time frame.

Upon review, the evidence of record supports that a “deemed” denial of access occurred. Specifically, the Township set an extended response deadline of October 31, 2022. However, the Custodian failed to respond by the expiration of said deadline. Instead, the Custodian did not respond until January 3, 2023 through Ms. Barr. Thus, and like Kohn, GRC 2007-124, the Custodian’s failure to conform with the October 31, 2022 extended deadline results in a “deemed” denial of access.

Therefore, the 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 extended time frame results in a “deemed” denial of said request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. See also Kohn, GRC 2007-124.

### **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.

As a threshold issue, the GRC first addresses proper redaction methods under OPRA and the Custodian’s actions here in redacting the disclosed payroll register.

OPRA provides that if a custodian is “unable to comply with a request for access, then the Custodian shall indicate the specific basis” for noncompliance. N.J.S.A. 47:1A-5(g). In Wolosky v. Andover Reg’l Sch. Dist. (Sussex), GRC Complaint No. 2009-94 (April 2010), the GRC discussed what constitutes an appropriate redaction under OPRA. There, the Council found that “redaction must be accomplished by using a visually obvious method that shows the requestor the specific location of any redacted material in the record.” See also Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011)

Later, in Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015), the custodian used a “white-out” method to redact arrest reports. The Council drew a comparison to both Wolosky and Paff in finding that the custodian inappropriately redacted the responsive records. The Council reasoned that “such a method does not show the requestor the specific location of the redacted material or the volume of material redacted; thus, the specific location of the material underlying the redactions made was not visually obvious . . .” Id. at 3.

Here, the Custodian disclosed the payroll registers with “whited out” redactions to exclude what he described as deductions, third party contributions, and personal information. The Complainant argued that no lawful basis was given for the redactions except for basic descriptions thereof. Like the situation in Scheeler, and its progeny, the Custodian’s chosen method of redaction did not show the Complainant the specific location of the redacted material or the volume of material redacted; thus, the redactions were not visually obvious to him.

Accordingly, pursuant to Scheeler, GRC 2015-91, the Custodian’s method of “whiting out” the redacted information in payroll registers was not a “visually obvious method” showing “the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).

Having addressed the redaction issue, the GRC now turns to whether an unlawful denial of access occurred in this matter.

OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 592 (2011). Further, the personnel record exemption may apply to records that “. . . bear many of the indicia of personnel files.” N. Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

Regarding payroll records, in Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004), the Council was tasked with defining the term “payroll record” because that term is not addressed in OPRA. The Council looked to the ordinary meaning of the term as set forth in Black’s Law Dictionary (7th Ed., 1999) and N.J.A.C. 12:16-2.1, a Department of Labor regulation entitled “Payroll records.” The Council held that “payroll” records referred to the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an “employer” as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

[Id.]

However, the definition of a “payroll record” does not include individual employee deductions. Specifically, in O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009), the complainant challenged the custodian’s redaction of paycheck deductions made to a payroll check register. The Council held that while the register itself fell within the definition of a “payroll records,” the custodian lawfully redacted the itemized deductions because they were not considered “payroll” information. Id. at 7 (citing N.J.S.A. 47:1A-10; Executive Order No. 26 (Gov. McGreevey, 2002)). The Appellate Division reached a similar conclusion in Wolosky, 2017 N.J. Super. LEXIS 2868, holding that the custodian properly redacted individual pension and health insurance payments within a payroll register. Id. at 5, 7.

In the matter before the Council, the Complainant sought access to “salary and overtime information” for the Custodian and Mayor between January 1, 2022 and September 15, 2022. On January 3, 2023, during the pendency of the complaint, Ms. Barr disclosed two (2) payroll registers covering the requisite time frame showing the Custodian’s salary and overtime/double time payments, as well as the Mayor’s salary and “expense allocations.” The disclosed documents included a note stating that deductions, third party contributions, and personal information were redacted. Following submission of the SOI, the Complainant submitted a sur-reply arguing that the Custodian failed to identify the specific lawful basis for any redactions. The Complainant also argued that the Custodian failed to provide “the payroll record” he requested, which should show attendance information, citing Havlusch, Jr., GRC 2011-243.

Precedential case law supports that OPRA exempts access to deduction information of government employees. N.J.S.A. 47:1A-10; O’Shea, GRC 2008-283. Based on a review of the records in question, the GRC finds that OPRA and the precedential case law supports the Custodian’s redactions of the disclosed payroll records. Such a finding is consistent with the already identified case law, as well as the Council’s recent decision in Whiteside v. Twp. of Little Falls (Passaic), GRC Complaint No. 2021-89 (Interim Order dated February 28, 2023) (holding that the custodian lawfully redacted personal and deduction information within the disclosed payroll register).

Accordingly, the Custodian lawfully denied access to the redacted information within the disclosed payroll registers. N.J.S.A. 47:1A-6. Specifically, OPRA and prior case law supports that employee personal and deduction information is exempt from disclosure under N.J.S.A. 47:1A-10. O’Shea, GRC 2008-283. See also Whiteside, GRC 2021-89.

Finally, the GRC notes that the Complainant’s OPRA request specifically sought salary and overtime information, which was contained and visible in the disclosed payroll registers. The Complainant subsequently alleged that he sought a payroll record for which he was not given access: this is clearly erroneous based on a plain reading of the subject OPRA request. Further, this complaint is inapposite to Havlusch, Jr., where the complainant sought sign-in sheets and was denied access. Thus, the GRC will not address whether an unlawful denial of access to attendance records occurred because the Complainant did not request same, and the issue is thus not properly before the Council. See Burns v. N.J. Dep’t of State, Div. of Elections, GRC Complaint No. 2013-64 (September 2013).



## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specially, the Custodian, through a Clerk's Office employee, responded immediately to the Complainant's OPRA request extending the response time frame through October 31, 2022. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The 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 extended time frame results in a "deemed" denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. Pursuant to Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015), the Custodian's method of "whiting out" the redacted information in payroll registers was not a "visually obvious method" showing "the specific location of any redacted material in the record" and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).
4. The Custodian lawfully denied access to the redacted information within the disclosed payroll registers. N.J.S.A. 47:1A-6. Specifically, OPRA and prior case law supports that employee personal and deduction information is exempt from disclosure under N.J.S.A. 47:1A-10. O'Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009). See also Whiteside v. Twp. of Little Falls (Passaic), GRC Complaint No. 2021-89 (Interim Order dated February 28, 2023).

Prepared By: Frank F. Caruso  
Executive Director

March 19, 2024