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State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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JACQUELYN A. SUÁREZ  
Commissioner

## FINAL DECISION

### July 29, 2025 Government Records Council Meeting

Kevin Alexander  
Complainant

Complaint No. 2022-661

v.

Somerset County Board of Chosen Freeholder  
Custodian of Record

At the July 29, 2025, public meeting, the Government Records Council (“Council”) considered the July 22, 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 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).
2. The Custodian lawfully denied the Complainant access to the records sought in OPRA request item No. 1 because disclosure of same to him “does not advance the purpose of OPRA . . .” Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (Final Decision dated July 25, 2016) (citing Bart v. City of Paterson Hous. Auth. 403 N.J. Super. 609, 618 (App. Div. 2008)); N.J.S.A. 47:1A-6.
3. Because the correspondence sought in Complainant’s OPRA request item No. 2 did not exist at the time of the request, the Custodian was under no obligation to provide the record once she obtained same. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012). See also Driscoll v. Sch. Dist. of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008). Based on the foregoing, the Custodian did not unlawfully deny access to the December 23, 2022 correspondence. N.J.S.A. 47:1A-6.
4. The Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 3, 4, and 5 seeking correctional facility policies and procedures. N.J.S.A. 47:1A-6. In

the absence of evidence indicating that disclosure occurred, the Custodian shall disclose the fifteen (15) pages of identified responsive records to the Complainant.

5. **The Custodian shall comply with conclusion No. 4 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 July 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: July 31, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Kevin Alexander<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-661**

**v.**

**Somerset County Board of Chosen Freeholders<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies via U.S. Mail of:

1. “The letter that I directed to you [Mager]” on or about November 14, 2022.
2. “Any response that you would give in the matter of those civil rights violations.”
3. “Policies and procedures on grievance filed.”
4. “Policies on what’s classified as ‘legal mail’.”
5. “Policies and procedures on opening and inspecting ‘legal mail’.”

**Custodian of Record:** Kelly Mager

**Request Received by Custodian:** November 22, 2022

**Response Made by Custodian:** None.

**GRC Complaint Received:** December 8, 2022

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

**Request and Response:**

On November 22, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 29, 2022, Charissa N. Wijaya Hammerman, Esq. from Custodian Counsel’s firm sent a letter to the Complainant acknowledging receipt of the OPRA request and stated the request was being reviewed and investigated by Somerset County (“County”) to prepare a response.

**Denial of Access Complaint:**

On December 8, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated the lack of formal response to his

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

<sup>2</sup> Represented by Bradley D. Tishman, Esq., of Cleary Giacobbe Alfieri Jacobs, LLC (Oakland, 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.

OPRA request constituted a stall tactic by the County and called for transparency to public access records citing Tarus v. Borough of Pine Hill, 189 N.J. 497 (2007). The Complainant argued the requested policies and procedures already exist within N.J.A.C. 10A, which governs correctional facilities. The Complainant concluded that the Custodian unlawfully denied access because she did not produce the responsive records prior to the expiration of the seven (7) business days permitted by OPRA.

#### Statement of Information:<sup>4</sup>

On April 11, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 22, 2022. The Custodian certified that, on November 29, 2022, Custodian Counsel’s firm responded to the Complainant on her behalf acknowledging receipt of the OPRA request and stating the County would review and investigate the request to prepare a response. The Custodian certified that this OPRA request was inadvertently not addressed prior to the expiration of the statutory response time frame. The Custodian certified that, nevertheless, following receipt of the instant Denial of Access Complaint, she searched for and compiled each of the responsive records.

The Custodian argued that she did not intentionally deny access to the Complainant’s OPRA request. The Custodian contended that, regarding OPRA request item No. 1 seeking “correspondence from Kevin Alexander to Kelly Mager [Custodian] dated November 14, 2022,” the Complainant should have a copy of the letter he composed and sent to the County. The Custodian asserted that because of this, she was not legally required to disclose to the Complainant a copy of the correspondence he authored, citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008). The Custodian further contended that regarding OPRA request item No. 2 seeking “any response” from the Custodian to his November 14, 2022 correspondence, none existed at the time of the OPRA request. The Custodian averred that Ms. Wijaya Hammerman eventually did respond to the November 14, 2022 letter on December 23, 2022, well after the submission of this OPRA request. The Custodian thus argued that she could not have unlawfully denied access to a record that did not exist. The Custodian also noted that, pursuant to Bart, 403 N.J. Super. 609, she was not required to again disclose the response because the Complainant had already received the response.

The Custodian certified that, regarding the remaining OPRA request items, she identified two (2) pages of records responsive to item No. 3 and thirteen (13) pages of records responsive to item Nos. 4 and 5.

### 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.

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<sup>4</sup> On January 9, 2023, this complaint was referred to mediation. On February 9, 2023, this complaint was referred back to the GRC for adjudication.

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>5</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 dated October 31, 2007).

Here, the Complainant submitted his OPRA request on November 22, 2022, and Ms. Wijaya Hammerman acknowledged receipt of it on November 29, 2022. In the SOI, the Custodian certified that she received the OPRA request on November 22, 2022, and admitted that she inadvertently did not address the OPRA request prior to the statutory deadline. The Custodian further certified that Ms. Hammerman responded to the OPRA request in writing on her behalf on December 23, 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.

#### **OPRA Request Item No. 1**

New Jersey Courts have provided that "[t]he purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process'." Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). In Bart, 403 N.J. Super. 609,<sup>6</sup> the Appellate Division looked to the Lafayette Yard case in determining whether a custodian knowingly and willfully violated OPRA by not providing the complainant with a record already in his possession. The Court held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. Id. at 617. The Appellate Division reasoned that requiring a custodian to duplicate another copy

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<sup>5</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.

<sup>6</sup> Reversing Bart v. City of Paterson Hous. Auth., GRC Complaint No. 2005-145 (May 2006).

of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. Id. at 618 (citing Lafayette Yard, 183 N.J. at 535).

The Appellate Division's decision in Bart, however, turns upon the specific facts of that case. The Council's decision noted that the custodian certified that copies of the requested record were available at the Housing Authority's front desk upon simple verbal request by any member of the public. Bart, GRC 2005-145. Moreover, the complainant actually admitted that he was in possession of this record at the time of the OPRA request for the same record. Id.

Additionally, in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg'l Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (Interim Order dated February 2013), the complainant sought access to student discipline reports. The custodian's counsel responded, indicating that he provided the records in response to a prior OPRA request. The Council held that:

The Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant's December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to [Bart, 403 N.J. Super. 609].

[Id. at 13.]

In Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (Final Decision dated July 25, 2016), the complainant sought access to e-mails he composed and sent to the Office. The Council, relying on Bart, 403 N.J. Super. 609, held that no unlawful denial of access occurred. In reaching its conclusion, the Council reasoned that,

Although the Complainant has not affirmatively established that he possessed all responsive e-mails he sent to the Office at the time of his request, the intent of the Court's decision in Bart can be applied to the facts of this complaint. Specifically, requiring the Custodian to locate, reproduce, and disclose same does not advance the purposes of OPRA. Additionally, disclosing to the Complainant e-mails that he composed and sent to the Office neither maximizes his own knowledge about public affairs nor fosters a more informed Complainant.

[Id. at 6. See also Owoh, GRC 2012-330.]

In the instant matter, the Complainant's OPRA request item No. 1 sought a letter Complainant sent to the Custodian on November 14, 2022. In the SOI, the Custodian asserted that the Complainant should already be in possession of the record sought because he authored the correspondence in question. The Custodian contended that she was under no obligation to provide said records in accordance with Bart, 403 N.J. Super. at 618 and Caggiano, GRC 2014-408.

The GRC agrees that disclosing to the Complainant correspondence that he sent to or received from the Custodian neither maximizes his own knowledge about public affairs nor fosters a more informed Complainant. Simply put, the Complainant could not glean any insight into the inner workings of government by reviewing a letter he was privy to in the week preceding the OPRA request at issue. Thus, the Custodian was not required to disclose the letter to the Complainant. See Caggiano, GRC 2014-408

Therefore, the Custodian lawfully denied the Complainant access to the records sought in OPRA request item No. 1 because disclosure of same to him “does not advance the purpose of OPRA . . . .” Caggiano, GRC 2014-408 (citing Bart, 403 N.J. Super. at 618); N.J.S.A. 47:1A-6.

### OPRA Request Item No. 2

The Council has previously determined that a custodian is not required to provide records that came into existence after the submission of an OPRA request. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013). Further, OPRA does not contemplate on-going requests for records. See Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012) (citing Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005)).

Here, the Complainant’s OPRA request item No. 2 sought “any response” to his November 14, 2022 correspondence. In the SOI, the Custodian certified that the correspondence sought did not exist at the time of the instant December 8, 2022 OPRA request, as Ms. Wijaya Hammerman did not respond to the Complainant’s correspondence until December 23, 2022. Further, the Custodian argued that she could not have unlawfully denied access to OPRA request item No. 2 because the record sought did not exist at the time of her search. Thus, the Custodian was under no obligation to disclose the correspondence because the record sought came into existence after the submission of the OPRA request. See also Driscoll v. Sch. Dist. of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008).

Accordingly, because the correspondence sought in Complainant’s OPRA request item No. 2 did not exist at the time of the request, the Custodian was under no obligation to provide the record once she obtained same. Paff, GRC 2010-307; Paff, GRC 2012-262. See also Driscoll, GRC 2007-303. Based on the foregoing, the Custodian did not unlawfully deny access to the December 23, 2022 correspondence. N.J.S.A. 47:1A-6.

### OPRA Request Item Nos. 3, 4, & 5

In the Complainant’s OPRA request item Nos. 3, 4, and 5, he sought corrections policies and procedures for grievances, legal mail, and opening and inspecting legal mail respectively. In the Denial of Access Complaint, the Complainant argued the requested policies and procedures already existed within N.J.A.C. 10A, which governs correctional facilities, and argued he was unlawfully denied access. In the SOI, the Custodian certified that, despite the inadvertent lack of response to the OPRA request, she identified two (2) pages of records responsive to item No. 3 and thirteen (13) pages of records responsive to item Nos. 4 and 5 following receipt of the Denial of Access Complaint. The Custodian determined that the records she identified were disclosable

to the Complainant. Absent any evidence supporting that the Custodian sent these records to the Complainant, same should have been disclosed and were not.

Thus, the Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 3, 4, and 5 seeking correctional facility policies and procedures. N.J.S.A. 47:1A-6. In the absence of evidence indicating that disclosure occurred, the Custodian shall disclose the fifteen (15) pages of identified responsive records to the Complainant.

### **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).
2. The Custodian lawfully denied the Complainant access to the records sought in OPRA request item No. 1 because disclosure of same to him "does not advance the purpose of OPRA . . ." Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (Final Decision dated July 25, 2016) (citing Bart v. City of Paterson Hous. Auth. 403 N.J. Super. 609, 618 (App. Div. 2008)); N.J.S.A. 47:1A-6.
3. Because the correspondence sought in Complainant's OPRA request item No. 2 did not exist at the time of the request, the Custodian was under no obligation to provide the record once she obtained same. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012). See also Driscoll v. Sch. Dist. of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008). Based on the foregoing, the Custodian did not unlawfully deny access to the December 23, 2022 correspondence. N.J.S.A. 47:1A-6.
4. The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 3, 4, and 5 seeking correctional facility policies and procedures. N.J.S.A. 47:1A-6. In the absence of evidence indicating that disclosure occurred, the Custodian shall disclose the fifteen (15) pages of identified responsive records to the Complainant.
5. **The Custodian shall comply with conclusion No. 4 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**



Prepared By: Maria M. Rossi  
Staff Attorney

July 22, 2025