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Commissioner

## FINAL DECISION

### May 20, 2025 Government Records Council Meeting

Patrick Bender  
Complainant

Complaint No. 2022-663

v.

Monmouth County Sheriff's Office  
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council ("Council") considered the May 13, 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 has not borne her burden of proof that the proposed special service charge was warranted or reasonable. N.J.S.A. 47:1A-6. Specifically, evidence of record does not support that 2 ½ hours of time to produce between five (5) and ten (10) records represented an "extraordinary amount of time and effort." Moreover, the Custodian's charge of \$297.43 per day, which included \$225.00 for an hour of attorney review is not supported by OPRA. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199, 204 (Law Div. 2002). Thus, the Custodian shall locate the records responsive to the Complainant's OPRA request (for November 7, 2022) and disclose them to the Complainant with redactions where appropriate. The Custodian is permitted to charge any allowable copy costs associated with the production of the responsive records. N.J.S.A. 47:1A-5(b).
3. **The Custodian shall comply with conclusion No. 2 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 20<sup>th</sup> Day of May 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 27, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 20, 2025 Council Meeting**

**Patrick Bender<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-663**

**v.**

**Monmouth County Sheriff's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of the name, residential address, offense(s), offense description(s), date of birth or, alternatively, the year of birth or age in years, race and sex for every adult that was booked on new criminal charges into the Monmouth County Sheriff Corrections Division ("MCSCD") jail facility on November 7, 2022.

**Custodian of Record:** Cynthia Scott

**Request Received by Custodian:** November 8, 2022

**Response Made by Custodian:** No response was provided

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

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

**Request and Response:**

On November 8, 2022, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On December 7, 2022, the Complainant e-mailed the Custodian seeking a status update on his OPRA request. The Custodian did not respond to the OPRA request.

**Denial of Access Complaint:**

On December 8, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he did not receive a response to his OPRA request.<sup>4</sup>

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

<sup>2</sup> Represented by David A. Laughlin, Esq. of Birdsall & Laughlin, LLC (Wall, 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.

<sup>4</sup> The Complainant attached to his complaint a second OPRA request dated November 9, 2022, but does not include any arguments related thereto. Thus, the GRC will not address that OPRA request in this complaint.

### Statement of Information:

On February 14, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 8, 2022. The Custodian acknowledged that no response was provided to the Complainant because the Monmouth County Sheriff’s Office (“MCSO”) originally believed the OPRA request sought an “Offense Description,” or narrative of the offense. The Custodian averred that it was her understanding that this “was verbally relayed to the [Complainant] by County Counsel.”

The Custodian certified that the only record containing the information sought was a booking face sheet produceable from the Jail Management System (“JMS”). The Custodian noted that there is no JMS function that allows for the querying of face sheets by date of booking. The Custodian certified that to obtain this record, staff “must login to the JMS, query all intakes, select each individual record, copy the booking number, go to the reports screen, paste in said booking number, open the individual face sheet[,] and print the document.” The Custodian attached to the SOI copies of eleven (11) MCSCD’s booking sheets for November 8, 2022 and November 9, 2022<sup>5</sup> with redactions under N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-3; N.J.S.A. 47:1B-2; and Executive Order Nos. 9, 69 and 79.

The Custodian asserted that while she acknowledges the response failure, same was the result of an initial determination that no responsive records existed, which she believed was verbally communicated to the Complainant by the County’s Counsel. The Custodian nonetheless contended that a special service charge was warranted and provided a fourteen (14) point analysis in support of her contention. The Custodian asserted that she assessed a special service charge of \$297.43 per day, or \$594.86 total, “representing the actual cost for the appropriate personnel to retrieve, review and redact the [responsive] records,” was reasonable.

The Custodian submitted her 14-point analysis responding as follows:

#### **1. What records are requested?**

**Response:** The requestor sought 1. Defendant full name, 2. Defendant full residential address (including apartment number if available), 3. Offense(s), 4. Offense descriptions(s), 5. DOB (if DOB is not subject to disclosure, then please disclose year of birth or age in years), 6. Race and 7. Sex of “each adult that was booked into the Monmouth County Sheriff Corrections Division jail facility for an alleged criminal offense” on November 8, 2002 and November 9, 2022. See Item “6” attached.

After searching our records, [MCSO/Monmouth County Correctional Institution (“MCCI”)] believes the only responsive documents we can produce to supply the requested information are the Booking Intake Sheets.

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<sup>5</sup> The November 8, 2022 records appear to be responsive to the second OPRA request the Complainant attached to his Denial of Access Complaint.

**2. Give a general nature description and number of the government records requested.**

**Response:** Booking Intake Sheets are created for each inmate that is booked into the facility. The number of these documents varies for any given day, but typically would be between 5 to 10 inmates daily.

**3. What is the period of time over which the records extend?**

**Response:** Booking Intake Sheets have been created for many years. Under records retention policies set by the State, the Booking Intake Sheets are destroyed 2 years after discharge or completion of sentence. A Booking Intake Sheet is created for each inmate incarcerated MCCI.

**4. Are some or all of the records sought archived or in storage?**

**Response:** No.

**5. What is the size of the agency (total number of employees)?**

**Response:** MCSO, Department of Corrections consists of 275 sworn staff (Undersheriff, Warden, Captains, Lieutenants, Sergeants, Investigators, Officers) and 25 Civilian Staff members.

**6. What is the number of employees available to accommodate the records request?**

**Response:** Only administrative staff, familiar with the JMS and booking procedures, are capable of retrieving the Booking Intake Sheets responsive to the request.

**7. To what extent do the requested records have to be redacted?**

**Response:** Extensively, as is evident in looking at each document. See “Item 9” and the responsive documents supplied herewith. Moreover, the redactions must be reviewed by an attorney (either with the County or Monmouth County Prosecutor’s Office) to be certain that the redactions are properly made so as to protect from disclosure information specifically excluded from disclosure by Executive Order or ordinance.

**8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?**

**Response:** MCSO/MCCI has a corrections officer assigned to “Booking Records.” His current base salary is \$119,132.00, which works out to an hourly rate of \$57.28/hr. Pulling the records for any given day, reviewing the same, and redacting the same takes time. We anticipate it will take approximately one hour, on average, to retrieve this information and perform the redaction for each day records are required.

- 9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?**

**Response:** MCSO/MCCI will have a Sergeant review each document prior to making it public to ensure all redactions are properly made. The Dayshift Booking Sergeant's base salary is \$126,017.00, which works out to an hourly rate of \$60.59/hr. We anticipate it will take approximately 15 minutes, on average, for the Sergeant to review the redacted booking intake sheets prepared by the Corrections Officer to assure the redactions are correct for each day that records are requested.

Thereafter, the redacted documents will need to be reviewed by an attorney (either with the County or Monmouth County Prosecutor's Office) whose time is typically billed at no less than \$225.00/hour. Given the efforts in this matter, we anticipate that at least an hour of attorney's time will be needed to assure compliance with the law on the redactions.

- 10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?**

**Response:** After production, the printed pages of the booking intake sheets will be shredded as the original information is stored in the JMS database, not as paper.

- 11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?**

**Response:** This duty needs to be assigned to someone familiar with booking procedures and the booking pages of the JMS, who also is assigned to a Monday-Friday position in the records area of Booking, to ensure it is done properly and efficiently. Those personnel are described above as a Corrections Officer and a Sergeant.

Moreover, an attorney is needed due to the complexity of the redactions that apply to the booking intake sheets. The booking sheets contain a number of different kinds of exempt information that must be accurately redacted.

- 12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?**

**Response:** A Corrections Officer (name withheld per "Daniel's Law N.J.S.A. 47:1B-2) will perform the original collection of the responsive documents, and a daytime Sergeant (name withheld per "Daniel's Law" N.J.S.A. 47:1B-2) will review the redaction to insure it is correctly performed. Their hourly rates have been provided above.

Counsel will be assigned as the need arises, and it is unlikely to be the same attorney for each redaction review.

**13. What is the availability of information technology and copying capabilities?**

**Response:** The information is contained on the MCCI JMS database, but the booking sheets have to be individually identified, selected, printed then scanned or printed to .pdf's and then reviewed and redacted, then printed on .pdf's after redaction to assure the redacted materials cannot be accessed once produced.

**14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.**

**Response:** MCCI undertook to collect the records requested and it took approximately one (1) hour of Corrections Officer's time, at his hourly rate of \$57.28/hr to produce the booking intake sheets for a given day and redact the same. We had a Sergeant then review the redacted records and that review took approximately 15 minutes of the Sergeant's time, at his hourly rate of \$60.59/hr. Based upon our compliance attempt, one (1) hour of the Correction Officer's time at \$57.28 plus 25% of an hour of the Sergeant's time (\$60.59 x 25%) \$15.15 results in a partial special service charge of \$72.43 per each date of booking intake sheets requested. Then, an attorney must be tasked with reviewing the redaction, given the complexity of the information and different sources of redaction authority necessary to properly exclude material that is not supposed to be released. We anticipate an hour of attorney's time at \$225.00/hour. Thus, a special service charge is sought, for each day of booking records sought of \$297.43 (\$72.43 for Correction's staff and plus \$225.00 for counsel).

Thus, for two dates, November 8 & 9, 2022, we request a total charge of \$594.86 representing the actual cost for the appropriate personnel to retrieve, review and redact the records. As the redacted product can be delivered via email, we seek no charge for the reproduction, just the special service charges detailed herein above.

Additional Submissions:<sup>6</sup>

On February 15, 2023, the Complainant submitted a sur-reply to the SOI. Therein, the Complainant asserted that the special service charge assessed by the Custodian was excessive, totaling \$108,561.95/year, and not within the spirit of OPRA. The Complainant further asserted that the proposed special service charge creates a prohibitive barrier to the requisite transparency of N.J.S.A. 47:1A-1. The Complainant stated that he is willing to consider paying the reasonable programming fees needed for the agency to satisfy its burden but expressed the need for the County "to establish timely and cost effective transparency" with regard to the production of government records.

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<sup>6</sup> On March 10, 2025, the Complainant provided the GRC with an additional submission, requesting that it be incorporated into the instant Denial of Access Complaint. However, the GRC did not consider this additional submission as it was provided outside of the applicable statutory timeframe. N.J.A.C. 5:105-2.4(n).

## 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 dated October 31, 2007).

Here, the Complainant submitted the subject OPRA request on November 8, 2022. The Complainant subsequently filed this complaint alleging that the Custodian failed to respond to it. In the SOI, the Custodian conceded that she failed to timely respond to the OPRA request due to an initial determination that no responsive records existed, which she believed was verbally communicated to the Complainant.

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.

### Special Service Charge

Whenever a records custodian asserts that fulfilling an OPRA records request requires an "extraordinary" expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (emphasis added).]

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<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.

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case-by-case basis and requires an analysis of a variety of factors. The factors relevant to this analysis were discussed in Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id. However, a custodian must provide a requestor with “the opportunity to review and object to the charge prior to it being occurred.” Id.

Further, OPRA provides that if a custodian “asserts that part of a particular record is exempt from public access . . . the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.” N.J.S.A. 47:1A-5(g). However, OPRA does not prohibit a public agency’s use of an attorney to advise, supervise or even to perform such redactions. The Courier Post court agreed with the rationale that OPRA provided:

[F]or the “custodian” to redact, excise or delete the exempt information. The Legislature could have enacted an attorney review clause, but it did not. Neither did it create a special subclass for attorney bills and accord to them any kind of special treatment. It appears *rather conclusively that the custodian is responsible* for asserting the privilege and making the redaction.

[Id. at 203-204 (emphasis added)].

The court ultimately held that “[a]ttorneys’ fees will not be allowed to be charged to the Post or to any other requestor of documents for review and redaction of exempt material.” Id. at

207. The court's holding in Courier Post is clear: "[a]ttorneys' fees will not be allowed to be charged . . . to any other requestor of documents for review and redaction of exempt material." Id. To this end, the Council has previously decided that an agency could not pass the cost of a contracted attorney's time onto the requestor as part of a special service charge. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-71 (Interim Order dated June 26, 2012).

In the instant matter, the Custodian submitted a fourteen (14) point analysis in support of her contention that a special service charge is warranted and reasonable here. A review of that analysis shows that the Custodian estimated a total of one (1) hour and fifteen (15) minutes hours for collection, review, and manual redacting of face sheets and one (1) hour for their attorney to review said redactions to ensure that all personal identifying information was properly excluded. The Custodian's proposed special service charge of \$297.43 per day was calculated as follows: \$57.28 per hour to produce and redact the responsive records; \$60.59 per hour (total rate for one quarter of an hour was \$15.15) for a Sergeant's time to review the redacted records; and \$225.00 per hour for MCSCD's attorney's compliance review. The Custodian also attached to the SOI copies of redacted face sheets for November 8, and 9, 2022, from which she derived the proposed special service charge.

However, upon review of the 14-point analysis and those redacted records attached to the SOI, the GRC is not persuaded that the special service charge is warranted or reasonable. Specifically, the Custodian admitted that the responsive records range from five (5) to ten (10) bookings for the one day identified in the OPRA request. Also, the total time needed to review and redact the records compared to the agency size and staff availability does not support that same requires an "extraordinary amount of time and effort" to complete the compilation, review, and redaction thereof. Further, the records for which the Custodian is seeking payment of a special service charge are forms with a uniform placement of all information. Thus, redaction of each is rather simplified through the uniformity of the records. Finally, the charge for attorney review goes against the longstanding Courier Post precedent that agencies are not allowed to pass on contracted attorney time. This is more so the case here where the redactions are not hyper technical; the exempt information identified by the Custodian in the SOI is basic personal information and mugshots. Therefore, the Custodian's proposed special service charge is unlawful under OPRA.

Accordingly, the Custodian has not borne her burden of proof that the proposed special service charge was warranted or reasonable. N.J.S.A. 47:1A-6. Specifically, evidence of record does not support that 2 ½ hours of time to produce between five (5) and ten (10) records represented an "extraordinary amount of time and effort." Moreover, the Custodian's charge of \$297.43 per day, which included \$225.00 for an hour of attorney review is not supported by OPRA. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199, 204. Thus, the Custodian shall locate the records responsive to the Complainant's OPRA request (for November 7, 2022) and disclose them to the Complainant with redactions where appropriate. The Custodian is permitted to charge any allowable copy costs associated with the production of the responsive records. N.J.S.A. 47:1A-5(b).

## 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 has not borne her burden of proof that the proposed special service charge was warranted or reasonable. N.J.S.A. 47:1A-6. Specifically, evidence of record does not support that 2 ½ hours of time to produce between five (5) and ten (10) records represented an "extraordinary amount of time and effort." Moreover, the Custodian's charge of \$297.43 per day, which included \$225.00 for an hour of attorney review is not supported by OPRA. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199, 204 (Law Div. 2002). Thus, the Custodian shall locate the records responsive to the Complainant's OPRA request (for November 7, 2022) and disclose them to the Complainant with redactions where appropriate. The Custodian is permitted to charge any allowable copy costs associated with the production of the responsive records. N.J.S.A. 47:1A-5(b).
3. **The Custodian shall comply with conclusion No. 2 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: Jennifer C. Howell  
Staff Attorney

May 13, 2022