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

FINAL DECISION

May 20, 2025 Government Records Council Meeting

James Griglio
Complainant

Complaint No. 2022-670

v.

Port Authority of NY & NJ
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 Complainant was not prejudiced by the Custodian’s failure to deliver a copy of the Statement of Information to him because the GRC provided the Complainant with a copy of the Statement of Information on July 11, 2023, and restarted the time for compliance with the provisions of N.J.A.C. 5:105-2.4(n) as of that date. Further, the GRC accepted and considered the Complainant’s reply to the Statement of Information which was received on the fifth (5th) business day following the Complainant’s receipt of the statement. As such, the Council will not rule in favor of the Complainant based solely on the Custodian’s failure to comply with the provisions of N.J.A.C. 5:105-2.4(h).
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 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).
3. Because the Complainant’s request was a valid request for e-mails, having met all the criteria set forth in Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Custodian unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. See Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). Therefore, the Custodian shall search for potentially responsive e-mails and disclose them to the Complainant, with redactions where applicable, or certify to the Complainant if no responsive records exist.
4. **The Custodian shall comply with conclusion No. 3 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).

5. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. See Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, after the Custodian denied the Complainant access to the requested records, he filed a Denial of Access Complaint, resulting in the Council finding that the Custodian violated OPRA and ordering the Custodian to disclose the records. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(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 20th 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**

**James Griglio¹
Complainant**

GRC Complaint No. 2022-670

v.

**Port Authority of NY & NJ²
Custodial Agency**

Records Relevant to Complaint: “Copies of all Port Authority (@panynj.gov) internal and external e-mails, to or from the following Port Authority employees, as well as to or from the New York City Fire Department Employees (@FDNY.nyc.gov) pertaining to the Mutual Aid Agreement for Airport Emergencies agreement signed on August 1, 2022 by the LaGuardia Airport and JFK Airport facility managers:

Teresa Rizzuto;
Anthony Vero;
Douglas Stern;
Joseph Marino; and
Joshua Cole; during the following periods of time:

February 1, 2021 – June 30, 2021;
August 1, 2021 – November 30, 2021; and
July 1, 2022 – August 31, 2022.”

Custodian of Record: William Shalewitz
Request Received by Custodian: October 27, 2022
Response Made by Custodian: None
GRC Complaint Received: December 14, 2022

Background³

Request and Response:

On October 27, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Custodian did not respond to

¹ Represented by Craig Kozan, Esq., of Witham & Kozan, P.A. (Lincoln Park, NJ).

² Represented by Andres J. Castillo, Esq. & Caitlin Sullivan, Esq. (New York, NY).

³ 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's request. On November 15, 2022, the Complainant e-mailed the Port Authority of NY & NJ ("PANYNJ") secretary's office to check the status of his request but did not receive a reply.

Denial of Access Complaint:

On December 14, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that on October 27, 2022, he submitted his OPRA request to the Custodian and did not receive a response. The Complainant further stated that on November 15, 2022, he e-mailed the PANYNJ secretary's office inquiring about the status of his OPRA request and did not receive a reply.

Statement of Information:

On March 28, 2023, the Custodian filed a Statement of Information ("SOI").⁴ The Custodian certified that he received the Complainant's OPRA request on October 27, 2022, and did not respond to it. The Custodian certified that he was unable to conduct a search for responsive records because the request is overly broad and unclear. The Custodian certified that the request is seeking records pertaining to a broad subject matter, which is a Mutual Aid Agreement entered into in 2022 between the PANYNJ and the New York City Fire Department ("FDNY") that details responsibilities for responding to certain emergencies at LaGuardia and JFK Airports ("Mutual Aid Agreement").

The Custodian certified that, "[c]ourts have held that requests framed as seeking all materials or documents 'concerning' (similar to 'regarding' or 'pertaining to') a certain topic or subject matter are not properly framed and must be particularized." The Custodian cited Port Auth. Police Benevolent Ass'n v. Port Auth., 2018 N.J. Super. Unpub. LEXIS 2785 (App. Div. 2018). The Custodian further certified that requests framed in such a manner are "akin to requests for 'information generally,' rather than specific, identifiable records," citing Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012). The Custodian certified that the PANYNJ intends to work with the Complainant to revise and reframe the request.

Additional Submission:

On July 18, 2023, the Complainant's Counsel submitted to the GRC a reply to the SOI. Counsel first asserted that N.J.A.C. 5:105-2.4(h) provides that "[a] custodian's failure to submit a completed and signed SOI, and to serve the complainant with the SOI, may result in the Council's issuing a decision in favor of the complainant." The Complainant's Counsel argued that because the Custodian failed to provide a copy of the SOI to the Complainant pursuant to the regulation, the Council should rule in the Complainant's favor as a matter of procedure.

The Complainant's Counsel next argued that contrary to the Custodian's assertion, the Complainant's request was very specific. For the named individuals, Counsel broke down the

⁴ The Custodian failed to deliver a copy of the SOI to the Complainant; however, the GRC forwarded a copy of the SOI to the Custodian's Counsel on July 11, 2023, and informed Complainant's Counsel that the time for compliance with the provisions of N.J.A.C. 5:105-2.4(n) would commence as of that date.

Complainant's request into five (5) separate request items. For each request item, Counsel set forth the name of the individual that the Complainant identified as the sender or recipient of the requested e-mails, the time periods during which the e-mails would have been transmitted, and the subject of the e-mails, namely, the Mutual Aid Agreement. As a sixth (6th) request item, Counsel identified the senders or recipients as FDNY employees, having an e-mail domain of @FDNY.nyc.gov. Counsel stated this request item was also sufficiently specific to enable the Custodian to locate and furnish the requested records to the Complainant.

The Complainant's Counsel argued that the Custodian focused on the Complainant's use of the phrase "pertaining to." However, Counsel stated that the Complainant used that phrase as a means of further identifying the requested e-mail correspondence by directing the Custodian's attention to the records sought by the Complainant. Counsel stated that the case relied upon by the Custodian to deny access, Port Auth. PBA, 2018 N.J. Super. Unpub. LEXIS 2785, reinforces the Complainant's argument because, as enunciated by the court, his request "described the records sought with the requisite specificity and narrowed the scope of inquiry to a discrete and limited subject matter." Id. at 5.

Analysis

Procedural Issue

As a threshold issue, the GRC first will address the Complainant's assertion that the Council should rule in his favor because N.J.A.C. 5:105-2.4(h) provides that the Council may issue a decision in favor of the complainant if the custodian fails to serve the complainant with the SOI. Here, it is clear from the evidence of record that the Custodian did not provide a copy of the SOI to the Complainant. However, on July 11, 2023, the GRC delivered a copy of the SOI to the Complainant's Counsel.⁵ Moreover, the GRC informed Complainant's Counsel that the time for compliance with the provisions of N.J.A.C. 5:105-2.4(n) would commence as of that date. Thereafter, within five (5) business days, the Complainant submitted a reply to the SOI, which was accepted by the GRC as a timely submission.

Therefore, the Complainant was not prejudiced by the Custodian's failure to deliver a copy of the SOI to him because the GRC provided the Complainant with a copy of the SOI on July 11, 2023, and restarted the time for compliance with the provisions of N.J.A.C. 5:105-2.4(n) as of that date. Further, the GRC accepted and considered the Complainant's reply to the SOI which was received on the fifth (5th) business day following the Complainant's receipt of the SOI. As such, the Council will not rule in favor of the Complainant based solely on the Custodian's failure to comply with the provisions of N.J.A.C. 5:105-2.4(h).

Timeliness

Unless a shorter time period is otherwise provided, a custodian must 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 accordingly results in a "deemed" denial. Id. Further, a

⁵ This action is consistent with the GRC's regulations at N.J.A.C. 5:105-2.4(i), which provides that "[t]he Council shall provide the complainant with copies of the completed and signed SOI if the Custodian fails to do so."

custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁶ 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 OPRA request on October 27, 2022. The Complainant stated that he did not receive a response to the request, so on November 15, 2022, he e-mailed the PANYNJ secretary's office inquiring about the status of his request and did not receive a reply. In the SOI, the Custodian confirmed that he received the Complainant's OPRA request on October 27, 2022, and did not respond to it.

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 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.

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination."* N.J.S.A. 47:1A-1.

[MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005) (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be

⁶ 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.

required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁷ N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Invalid OPRA requests typically fall into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

With respect to requests for e-mails and correspondence, the GRC established specific criteria deemed necessary under OPRA to request such records in Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters and text messages. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Alt v. City of Vineland (Cumberland), GRC Complaint No. 2013-205 (June 2014).

Moreover, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Appellate Division found a request for “EZ Pass benefits afforded to retirees of the Port Authority, including all . . . correspondence between the Office of the Governor . . . and the Port Authority” to be valid under OPRA because it “was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information . . . [and] was limited to particularized identifiable government records, namely, correspondence with another government entity, rather than information generally.” Id. at 172, 176. The court noted that the complainant had “narrowed the scope of the inquiry to a discrete and limited subject matter,” and that fulfilling the request would involve “no research or analysis, but only a search for, and production of,” identifiable government records. Id. at 177-78.

Here, the Custodian certified in the SOI that he was unable to conduct a search for responsive records because the request is overly broad and unclear. The Custodian certified that

⁷ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

the request is seeking records pertaining to the Mutual Aid Agreement, which is a broad subject matter. The Custodian misunderstands the Complainant's request. The Complainant was not seeking records pertaining to the Mutual Aid Agreement; rather, he was seeking e-mails pertaining to the Mutual Aid Agreement. As framed, the Mutual Aid Agreement is the subject of the e-mails.

As such, the Complainant's request met all the criteria set forth in Elcavage, GRC 2009-07. The Complainant identified each sender and/or recipient ("to or from . . . Teresa Rizzuto, Anthony Vero, Douglas Stern, Joseph Marino and Joshus Cole"), the specific range of dates during which the email(s) were transmitted, and the content and/or subject of the email(s); to wit, the Mutual Aid Agreement. The Complainant clearly described the Mutual Aid Agreement with sufficient identifying information; namely, subject matter, parties, and date of execution.

Therefore, because the Complainant's request was a valid request for e-mails, having met all the criteria set forth in Elcavage, GRC 2009-07, the Custodian unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. See Burke, 429 N.J. Super. 169. Therefore, the Custodian shall search for potentially responsive e-mails and disclose them to the Complainant, with redactions where applicable, or certify to the Complainant if no responsive records exist.

Prevailing Party Attorney's Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . . . A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct" (quoting Buckhannon Bd. & Care Home v. West Virginia Dep't of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." Id. at 603 (quoting Black's Law Dictionary 1145 (7th ed.

1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties.” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[196 N.J. at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff's litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

Here, the Complainant filed an OPRA request on October 27, 2022, seeking copies of PANYNJ internal and external e-mails, to or from named PANYNJ employees, and to or from FDNY employees pertaining to the Mutual Aid Agreement during specific dates. The Custodian did not respond to the Complainant's request. On December 14, 2022, the Complainant filed the within complaint alleging the Custodian unlawfully denied him access to the requested records.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. After the Complainant filed a Denial of Access Complaint, the Council found that the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), resulting in a "deemed" denial of the Complainant's OPRA request, and further, notwithstanding such "deemed" denial, unlawfully denied the Complainant access to the requested e-mails. Consequently, the Council ordered disclosure of the requested e-mails. Thus, pursuant to the Council's decision, a causal nexus exists between this complaint and the change in the Custodian's conduct. See Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.

Therefore, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. See Mason, 196 N.J. at 76. Specifically, after the Custodian denied the Complainant access to the requested records, he filed a Denial of Access Complaint, resulting in the Council finding that the Custodian violated OPRA and ordering the Custodian to disclose the records. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant was not prejudiced by the Custodian's failure to deliver a copy of the Statement of Information to him because the GRC provided the Complainant with a copy of the Statement of Information on July 11, 2023, and restarted the time for compliance with the provisions of N.J.A.C. 5:105-2.4(n) as of that date. Further, the GRC accepted and considered the Complainant's reply to the Statement of Information which was received on the fifth (5th) business day following the Complainant's receipt of the statement. As such, the Council will not rule in favor of the Complainant based solely on the Custodian's failure to comply with the provisions of N.J.A.C. 5:105-2.4(h).
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 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).

3. Because the Complainant's request was a valid request for e-mails, having met all the criteria set forth in Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Custodian unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. See Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). Therefore, the Custodian shall search for potentially responsive e-mails and disclose them to the Complainant, with redactions where applicable, or certify to the Complainant if no responsive records exist.
4. **The Custodian shall comply with conclusion No. 3 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).**
5. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. See Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, after the Custodian denied the Complainant access to the requested records, he filed a Denial of Access Complaint, resulting in the Council finding that the Custodian violated OPRA and ordering the Custodian to disclose the records. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Prepared By: John E. Stewart

May 13, 2025