



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

January 27, 2026 Government Records Council Meeting

Brian Scott Morton
Complainant

Complaint No. 2023-138

v.

NJ Civil Service Commission
Custodian of Record

At the January 27, 2026, public meeting, the Government Records Council (“Council”) considered the January 20, 2026, 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 notwithstanding the Custodian’s initial reliance on N.J.A.C. 4A:4-2.16, which does not appear to apply to the requested “questions” removed from the civil service exam for Symbol No. PM2390C, Executive Order No. 26 (Gov. McGreevey, 2002) contains a clear exemption for those records. N.J.S.A. 47:1A-9(a). Thus, no unlawful denial of access occurred. N.J.S.A. 47:1A-6.

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 27th Day of January 2026

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: February 2, 2026



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 27, 2026 Council Meeting**

**Brian Scott Morton¹
Complainant**

GRC Complaint No. 2023-138

v.

**N.J. Civil Service Commission²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “the questions” removed from the civil service exam for Symbol No. PM2390C after same was administered and graded.

Custodian of Record: Randy Belin
Request Received by Custodian: May 10, 2023
Response Made by Custodian: May 24, 2023
GRC Complaint Received: June 15, 2023

Background³

Request and Response:

On May 10, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 24, 2023,⁴ the Custodian responded in writing denying the OPRA request because it sought “examination records” exempt from disclosure under N.J.A.C. 4A:4-2.16.

Denial of Access Complaint:

On June 15, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that, during an appeal of his exam results for Symbol No. PM2390C, N.J. Civil Service Commission (“CSC”) personnel advised him that some questions were removed from the written portion of the exam. The Complainant stated that he filed the subject OPRA request to ascertain which questions were removed.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Brian D. Ragunan.

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.

⁴ The GRC notes the response was ten (10) business days after receipt of the OPRA request, which constitutes a “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC will not address this issue because the Complainant did not state a claim thereon.

The Complainant disputed the Custodian's denial of access, first arguing that N.J.A.C. 4A:4-2.16 did not prohibit disclosure of the requested information. The Complainant next contended that if the questions were so egregious that they were removed from the exam, then they should not be included in future exams. The Complainant thus argued that disclosure would not jeopardize future exams. The Complainant further contended that CSC committed extensive errors in past exam results, including the current situation, and candidates who have paid to take the exam have a right to know how the exam changes impacted their results. The Complainant finally argued that these exams, which impact employee livelihoods, should either be accurate or subject to transparency when corrections are made.

Statement of Information:

On July 25, 2023, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on May 10, 2023. The Custodian certified that he responded in writing on May 24, 2023, denying the request under N.J.A.C. 4A:4-2.16.

The Custodian contended that his denial was lawful because exam papers and scoring keys are exempt from disclosure under CSC regulations at N.J.A.C. 4:4A-2.16. The Custodian stated that N.J.S.A. 47:1A-9(a) recognizes exemptions that exist in promulgated regulations. The Custodian stated that CSC is required to promulgate regulations with an explicit responsibility to ensure security in the exam process. See N.J.S.A. 11A:2-6(d); N.J.S.A. 11A:401(c). The Custodian stated that, to this end, CSC promulgated N.J.A.C. 4A:4-2.16 to identify those limited records as subject to disclosure, and the regulation does not include exam papers and scoring keys. The Custodian further argued that exam papers and scoring keys are not even subject to inspection by the appointing authority under N.J.A.C. 4A:4-1.1.

The Custodian argued the Complainant erred in contending that N.J.A.C. 4A:4-2.16 did not support the denial. The Custodian averred that regulations should be construed in accordance with their plain meaning pursuant to J.H. v. R&M Tagliareni, LLC, 239 N.J. 198, 214 (2019) (internal citation omitted). The Custodian argued that, had CSC intended exam papers to be disclosable, such papers would have been included in N.J.A.C. 4A:4-2.16(b). The Custodian further argued that the removal of questions from an exam is not relevant to their exempt status.

Additional Submissions:

On July 31, 2023, the Complainant submitted a rebuttal to the SOI. Therein, the Complainant argued the SOI was an attempt to deflect away from the fact that N.J.A.C. 4A:4-2.16 does not contain a direct exemption for exam questions. The Complainant also disputed that the removed questions would remain exempt from disclosure if they likely would not be placed on a future exam. The Complainant finally asserted that, if the CSC was truly concerned about exam security, they would not have administered an exam with unacceptable questions only to remove them after the fact without any notification to the exam takers.

Analysis

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 also provides that:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] . . . any other statute; resolution of either or both Houses of the Legislature; *regulation promulgated under the authority of any statute* or Executive Order of the Governor; *Executive Order of the Governor*; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

To the above, CSC’s regulations address the retention and inspection of examination records as follows:

- (a) The following examination records shall be retained until the expiration of the eligible list:
 - 1. The public announcement;
 - 2. All applications;
 - 3. The examination papers and scoring keys;
 - 4. A description of the examination, including the date held, rating system and minimum score required, if any;
 - 5. The list of eligibles;
 - 6. The failure roster; and
 - 7. Any other pertinent information.

- (b) All examination records listed in (a)1, 4, and 5 above shall be open to public inspection.
 - 1. Examination records listed in (a)2 above shall not be open to public inspection but may be open to inspection by an appointing authority, on condition that the appointing authority not disclose the records to outside persons
 - 2. Examination records listed in (a)6 above shall not be open to public inspection but shall be open to inspection by the appointing authority to which the eligible list has been certified, upon request by the appointing

authority and on condition that the appointing authority not disclose the records to outside persons

....

4. The Chairperson or designee shall determine which other records may be open to public inspection and the conditions for such inspection.

[N.J.A.C. 4A:4-2.16(a)-(b).]

Here, the Custodian denied access to the Complainant's OPRA request seeking "the questions" removed from the civil service exam for Symbol No. PM2390C under N.J.A.C. 4A:4-2.16. This complaint ensued, where the Complainant argued that the cited regulation did not apply to questions on an exam. In the SOI, the Custodian maintained his position that N.J.A.C. 4A:4-2.16 was promulgated to identify those specific exam records subject to public disclosure and did not include the examination papers. The Custodian further asserted that had CSC intended to designate examination papers as public records, such disclosability would have been addressed in the regulation. The Custodian urged the GRC to interpret the CSC regulation in accordance with its plain meaning.

Initially, the GRC notes that disclosability of civil service examination papers appears to be a matter of first impression. Upon review, the GRC is not entirely persuaded that a plain reading of N.J.A.C. 4A:4-2.16 supports the Custodian's denial of the requested "questions." Specifically, N.J.A.C. 4A:4-2.16(a) lists seven (7) categories of "examination records" required to be retained by CSC. N.J.A.C. 4A:2.16(b) directly addresses the disclosability of five (5) of those categories. For those records not addressed, N.J.A.C. 4A:4-2.16(b)(4) provides the CSC Chair the ability to determine "which other records may be open to public inspection and the conditions of such inspection" Id. The only records not addressed in N.J.A.C. 4A:4-2.16(b) are "examination papers and scoring keys" and "[a]ny other pertinent information." Thus, N.J.A.C. 4A:4-2.16 actually appears to give CSC latitude to provide access to examination papers and scoring keys on a case-by-case basis. For this reason, the GRC rejects the Custodian's argument that this regulatory provision creates a brightline exemption supporting the Custodian's denial of access.

However, the Council is permitted to raise additional defenses regarding the disclosure of records *sua sponte* pursuant to N.J.A.C. 5:105-2.1(h) and Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div. 2007), certif. denied, Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007)).⁵ In Paff, the complainant challenged the GRC's authority to uphold a denial of access for reasons never raised by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. The court held that:

The GRC has an independent obligation to 'render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to' OPRA The GRC is not limited

⁵ On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

to assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct. Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. 6

[Id. at 4-5.]

To the above, Executive Order No. 26 (Gov. McGreevey, 2002) ("EO 26") provides for an OPRA exemption to "[t]est questions, scoring keys and other examination data *pertaining to the administration of an examination for public employment or licensing.*" Id. (emphasis added). EO 26 is clear that test questions for a public employment exam are not subject to disclosure under OPRA. Based on EO 26, the GRC must hold that Complainant's OPRA request should have been denied through this exemption.

Accordingly, notwithstanding the Custodian's initial reliance on N.J.A.C. 4A:4-2.16, which does not appear to apply to the requested "questions" removed from the civil service exam for Symbol No. PM2390C, EO 26 contains a clear exemption for those records. N.J.S.A. 47:1A-9(a). Thus, no unlawful denial of access occurred. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that notwithstanding the Custodian's initial reliance on N.J.A.C. 4A:4-2.16, which does not appear to apply to the requested "questions" removed from the civil service exam for Symbol No. PM2390C, Executive Order No. 26 (Gov. McGreevey, 2002) contains a clear exemption for those records. N.J.S.A. 47:1A-9(a). Thus, no unlawful denial of access occurred. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

January 20, 2026⁶

⁶ This complaint was prepared for adjudication at the Council's February 18, 2025 meeting, but could not be adjudicated due to lack of quorum.