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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

July 29, 2025 Government Records Council Meeting

Kevin Alexander
Complainant

Complaint No. 2023-14

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), Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian unlawfully denied access to the Complainant’s OPRA request item No. 1 seeking Officer Backer’s full name. N.J.S.A. 47:1A-6. Specifically, the Custodian indicated the County’s willingness to provide the Complainant with the full name, but did not provide evidence of disclosure. See Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008). Thus, the Custodian shall locate and provide such a record to the Complainant.
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 circumstances 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).**
4. Notwithstanding the “deemed” denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 2. Specifically, the Custodian certified in the Statement of Information, and the record

reflects that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005)

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 29th 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 Alexander¹
Complainant**

GRC Complaint No. 2023-14

v.

**Somerset County Board of Chosen Freeholders²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S. Mail of:

1. The full and complete name of Officer Backer, badge #66.
2. Any and all confiscation forms that were to be submitted by Officer Backer on January 4, 2023.

Custodian of Record: Kelly Mager

Request Received by Custodian: January 9, 2023

Response Made by Custodian: None.

GRC Complaint Received: January 23, 2023

Background³

Request and Response:

On January 5, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On January 23, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted he sought Officer Backer’s full name and all confiscation forms he submitted on January 4, 2023. The Complainant stated his property was taken from him which included countless of his “law books” and was never provided a confiscation form. The Complainant argued that Officer Backer’s employment is a matter related to public records and the records are sought for additional legal action.

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary Giacobbe Alfieri Jacobs, LLC (Oakland, NJ).

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.

Statement of Information:⁴

On May 4, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 9, 2023. The Custodian certified that the County inadvertently did not respond to the underlying OPRA request.

The Custodian asserted that the Somerset County Board of Chosen Freeholders (“County”) was willing to provide Officer Backer’s full name to satisfy OPRA request item No. 1.

The Custodian argued that the County is not in possession of any responsive records to OPRA request item No. 2 because such records do not exist. The Custodian explained that the confiscation form referenced is a form utilized by the New Jersey Department of Corrections when it removes an item from an inmate. The Custodian certified that the County itself does not use a confiscation form, however, a property receipt is sometimes provided when items are removed from an inmate. The Custodian certified that the County reviewed its records and determined that a property receipt was neither attached to nor referenced in the relevant materials pertaining to January 4, 2023 from Officer Backer. The Custodian affirmed that the Chief of the Corrections Division discussed the matter with Officer Backer, who advised that a property receipt was not prepared or given to the Complainant because he mistakenly believed the confiscated property belonged to the Somerset County Jail Law Library. The Custodian certified that all items at issue were promptly returned to the Complainant. The Custodian asserted that because the County is not in possession of responsive records as they do not exist, no unlawful denial has occurred.

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).⁵ 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 January 5, 2023 and subsequently filed this complaint asserting that the Custodian failed to respond to it. In the SOI, the Custodian certified that she received the subject OPRA request on January 9, 2023 and inadvertently failed to reply in writing. Thus, the evidence clearly supports that a “deemed” denial of access occurred.

⁴ On February 22, 2023, this complaint was referred to mediation. On March 28, 2023, this complaint was referred back to the GRC for adjudication.

⁵ 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.

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:

Regarding personnel records, OPRA begins with a presumption against disclosure and "proceeds with a few narrow exceptions that . . . need to be considered." Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These exceptions include "an individual's name, title, position, salary, payroll record, length of service, *date of separation and the reason therefore*, and the amount and type of any pension received shall be government record." N.J.S.A. 47:1A-10 ("Section 10") (emphasis added).

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that "name, title, position, salary, payroll record and length of service" is information which is specifically considered to be a "government record" under Section 10, and that "payroll records" must be disclosed pursuant to Jackson, GRC 2002-98. The Council thus held that the complainant's March 25, 2009, request for "[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009" was a valid request pursuant to OPRA. Id. at 5. Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012). See also Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).

In the instant matter, the Complainant requested in part Section 10 information, Officer Backer's full name, from the Custodian. In the SOI, the Custodian certified she inadvertently did not respond to the Complainant's OPRA request. The Custodian indicated the County "was willing to provide" Officer Backer's full name to the Complainant, however, there is no evidence of record to support that disclosure occurred. Thus, in accordance with Valdes and Morgano, the Custodian was obligated to instead provide the most comprehensive records containing Section 10 information, with redactions applied as necessary.

Accordingly, the Custodian unlawfully denied access to the Complainant's OPRA request item No. 1 seeking Officer Backer's full name. N.J.S.A. 47:1A-6. Specifically, the Custodian indicated the County's willingness to provide the Complainant with the full name, but did not provide evidence of disclosure. See Valdes, GRC 2011-64; Morgano, GRC 2007-156. Thus, the Custodian shall locate and provide such a record to the Complainant.

OPRA request item No. 2:

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant's OPRA request item No. 2 sought confiscation forms prepared by Officer Backer on January 4, 2023. In the SOI, the Custodian certified that she inadvertently failed to respond to the OPRA request. The Custodian further certified that the Chief of the Corrections Division discussed this matter with Officer Backer, who advised that a property receipt was not given to the Complainant because the officer mistakenly believed the confiscated property belonged to the Somerset County Jail Law Library thus not warranting the creation of a property receipt.

Upon review, the GRC is persuaded that no unlawful denial of access has occurred. The evidence of record supports the Custodian's position that no responsive records exist. That is, the Custodian has certified that no records exist. Further, the Custodian certified that the County does not utilize confiscation forms and no responsive property receipts were created. Also, the Complainant has not provided any competent, credible evidence necessary to refute the certification presented by the Custodian in the SOI. Based on the foregoing, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, notwithstanding the "deemed" denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 2. Specifically, the Custodian certified in the SOI, and the record reflects that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

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), Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian unlawfully denied access to the Complainant's OPRA request item No. 1 seeking Officer Backer's full name. N.J.S.A. 47:1A-6. Specifically, the Custodian indicated the County's willingness to provide the Complainant with the full name, but did not provide evidence of disclosure. See Valdes v. Union City Bd. of Educ.

(Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008). Thus, the Custodian shall locate and provide such a record to the Complainant.

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 circumstances 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).**
4. Notwithstanding the "deemed" denial of access, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 2. Specifically, the Custodian certified in the Statement of Information, and the record reflects that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Maria M. Rossi
Staff Attorney

July 22, 2025