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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

July 29, 2025 Government Records Council Meeting

Jack Berger
Complainant

Complaint No. 2023-164
and 2023-165

v.

Woodbridge Township School District (Middlesex)
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 his burden of proof that he timely responded to the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 requests 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. Absent the express consent from unsuccessful candidates, the resumes of unsuccessful candidates and other information concerning job applicants, inclusive of a list of candidates, are exempt from disclosure under OPRA by operation of Executive Order No. 26 (Gov. McGreevey, 2002). Thus, the Custodian lawfully denied access to said records. N.J.S.A. 47:1A-6.
3. The responsive interview score sheets are exempt from disclosure under the “inter-agency or intra-agency, advisory, consultative, or deliberative material” exemption. N.J.S.A. 47:1A-1.1; Fegley, Esq. v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2006-91 (December 2006). For this reason, the Custodian lawfully denied access to same. N.J.S.A. 47:1A-6.
4. The records sought in the Complainant’s June 23, 2023 OPRA request qualify as personnel records exempt from disclosure under OPRA. N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004). Thus, the Custodian lawfully denied access to same. 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 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**

**Jack Berger¹
Complainant**

**GRC Complaint No. 2023-164
and 2023-165²**

v.

**Woodbridge Township School District (Middlesex)³
Custodial Agency**

Records Relevant to Complaint:

June 21, 2023 OPRA Request:⁴ Hardcopies copies of the following for the 2022-2023 school year:

1. “Resumes of all Candidates who applied to the Attendance Secretary Position at Woodbridge Middle School [(“WMS”)]”;
2. “Interview Score Sheets of Candidates who applied to the Attendance Secretary Position at WMS”;
3. “List of Candidates who applied to the Attendance Secretary Position at WMS but who were not chosen for the Attendance Secretary Interview.”

June 23, 2023 OPRA Request:⁵ Hardcopies of the following for the 2019, 2020, 2021, 2022 and 2023 school years:

1. “List of all (Closed) Documented Workplace Violence Issues for Employees: Asst. Supt., Principals, Teachers, Guidance Staff, & Support Staff (Not Students)”;
2. “List of all Outcomes by the Supt and/or Woodbridge School Board: Written Warnings, Reprimands; Suspensions; Terminations; Contract Non-Renewals.”

Custodian of Record: Brian Wolferman

Request Received by Custodian: June 27, 2023

Response Made by Custodian: July 18, 2023; August 3, 2023

GRC Complaint Received: July 17, 2023

¹ No legal representation listed on record.

² These complaints have been consolidated due to commonality of parties and issues.

³ No legal representation listed on record.

⁴ This OPRA request is the subject of GRC Complaint No. 2023-164.

⁵ This OPRA request is the subject of GRC Complaint No. 2023-165.

Jack Berger v. Woodbridge Township School District (Middlesex), 2023-164 and 2023-165 – Findings and Recommendations of the Executive Director

Background⁶

Request:

On June 21, 2023, the Complainant submitted his first (1st) Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 23, 2023, the Complainant submitted his second (2nd) OPRA request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On July 17, 2023, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council (“GRC”). The Complainant stated that he submitted the subject OPRA requests on June 21, and 23, 2023. The Complainant stated that the Woodbridge Township School District (“District”) did not respond to his OPRA requests.

Response:

On July 18, 2023, the fourteenth (14th) business day after receipt of the OPRA requests, Executive Secretary Nicole Lanigan responded in writing on behalf of the Custodian stating that the District’s failure to timely respond was inadvertent; the Complainant’s OPRA requests had been “overlooked during a busy time, [and] a time where there were overlapping vacations that pushed [the requests] to the bottom of a ‘to-do’ list.” Ms. Lanigan stated that the District would be able to respond to both of the Complainant’s requests by July 27, 2023.

On August 3, 2023, the Custodian responded in writing to the subject OPRA requests. Regarding the Complainant’s June 21, 2023 OPRA request, the Custodian disclosed one responsive record, the resume of the successful candidate that was hired for the Secretary I position, with redactions for personal information. The Custodian denied the remaining portion of the OPRA request, stating that “the resumes of all candidates who applied and any list of candidates who applied are exempt” from disclosure pursuant to N.J.S.A. 47:1A-9 and Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”). The Custodian further denied access to the interview score sheets as confidential personnel information and as “inter-agency or intra-agency, advisory, consultative, or deliberative [(“ACD”)] material.”

Regarding the Complainant’s June 23, 2023 OPRA request, the Custodian requested that the Complainant “narrow the scope, or be more specific” about the term “workplace violence.” The Custodian stated that without review of a specific document, he was advised by the District’s legal team that records related to documented workplace violence issues for employees are exempt as confidential personnel information pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-10. The Custodian stated, that notwithstanding this position, he would submit the Complainant’s narrowed search to the District’s legal team.

⁶ 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.

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Statement of Information:

On August 8, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the subject OPRA requests on June 27, 2023. The Custodian certified that through Ms. Lanigan, he responded in writing on July 18, 2023, advising the Complainant that the District’s failure to timely respond was inadvertent; as explained to the Complainant, his requests had been overlooked. The Custodian certified that his search for records included communications with the District’s “legal team for clarification on what could be released,” and “the personnel department for documentation.” The Custodian stated that on August 3, 2023, after the filing of this complaint, he responded in writing to the Complainant disclosing responsive records, denying access to other records, and seeking clarification of the term “workplace violence.”

The Custodian certified, regarding the Complainant’s June 21, 2023 OPRA, he disclosed to the Complainant a responsive record, the resume of the candidate who was hired for the Secretary I position, with redactions on August 3, 2023. The Custodian contended that he lawfully denied access to the list of candidate names and resumes of all other applicants pursuant to N.J.S.A. 47:1A-9 and EO 26. The Custodian further contended that the interview scoring sheets were exempt from disclosure as confidential personnel information and as ACD material.

The Custodian certified, regarding the Complainant’s June 23, 2023 OPRA request, he requested the Complainant provide a “narrowed scope, explanation of the type of violence.” The Custodian certified that, as presented, the records sought were exempt from disclosure as confidential personnel information pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-10.

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).⁷ 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).

In the matter before the Council, the Complainant submitted his OPRA requests on June 21, and 23, 2023. This complaint followed, wherein the Complainant contended that the Custodian’s failure to respond resulted in a “deemed” denial of access. In the SOI, the Custodian certified that he received the Complainant’s OPRA requests on June 27, 2023 and that he

⁷ 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.

responded in writing, through Ms. Lanigan, on July 18, 2023, the fourteenth (14th) business day after receipt of same, advising that the Township’s failure to timely respond was inadvertent; the Complainant’s OPRA requests had been “overlooked during a busy time, [and] a time where there were overlapping vacations that pushed [the requests] to the bottom of a ‘to-do’ list.” The Custodian further certified that on August 3, 2023, he disclosed the record responsive to Complainant’s June 21, 2023 OPRA request and sought clarification with regard to the June 23, 2023 OPRA request.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 requests 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.

June 21, 2023 OPRA Request

Resumes and List of All Candidates

OPRA further 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)].

Additionally, EO 26 provides in relevant part:

No public agency shall disclose the résumés, applications for employment or other information concerning job applicants while a recruitment search is ongoing. The résumés of successful candidates shall be disclosed once the successful candidate is hired. The résumés of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.

[Id.]

In this matter, the Complainant requested a list of the names of all candidates, along with the resumes of those who applied to the Attendance Secretary Position at WMS but were not chosen for an interview for the WMS 2022-2023 school year. The Custodian disclosed the resume of the successful candidate, with redactions, and denied the Complainant access to the list of job candidate names and résumés of unsuccessful applicants pursuant to N.J.S.A. 47:1A-9 and EO 26.

Upon review, the EO 26 exemption applies to resumes of unsuccessful candidates and other information concerning job applicants. Further, there is nothing in the record to indicate that any unsuccessful candidate who applied to the Attendance Secretary position at WMS gave his/her consent to disclosure of a résumé or curriculum vitae. Therefore, the Custodian appropriately responded to the request disclosing the successful candidate's resume and denying access to the remaining resumes and candidates list.

Accordingly, absent the express consent from unsuccessful candidates, the resumes of unsuccessful candidates and other information concerning job applicants, inclusive of a list of candidates, are exempt from disclosure under OPRA by operation of EO 26. Thus, the Custodian lawfully denied access to said records. N.J.S.A. 47:1A-6.

Interview Score Sheets

OPRA provides that the definition of a government record “shall not include . . . [ACD] material.” When the exception is invoked, a governmental entity may “withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” Educ. Law Ctr. v. N.J. Dep’t. of Educ., 198 N.J. 274, 285 (2009) (citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)). The New Jersey Supreme Court has also ruled that a record containing or involving factual components is entitled to deliberative-process protection under the exemption in OPRA when it was used in decision-making process and its disclosure would reveal deliberations that occurred during that process. Educ. Law Ctr., 198 N.J. 274.

A custodian claiming an exception to the disclosure requirements under OPRA on that basis must initially satisfy two conditions: 1) the document must be pre-decisional, meaning that the document was generated prior to the adoption of the governmental entity's policy or decision; and 2) the document must reflect the deliberative process, which means that it must contain opinions, recommendations, or advice about agency policies. Id. at 286 (internal citations and quotations omitted). The key factor in this determination is whether the contents of the document reflect “formulation or exercise of . . . policy-oriented judgment or the process by which policy is formulated.” Id. at 295 (adopting the federal standard for determining whether material is “deliberative” and quoting Mapother v. Dep’t of Justice, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). Once the governmental entity satisfies these two threshold requirements, a presumption of confidentiality is established, which the requester may rebut by showing that the need for the materials overrides the government's interest in confidentiality. Id. at 286-87.

In Fegley, Esq. v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2006-91 (December 2006), the complainant challenged the custodian's denial of scoring forms from an interview. In response to the complaint, the custodian provided a number of authorities for non-disclosure, inclusive of the Council's prior decision in Sooy v. N.J. Dep't of Corr., GRC Complaint No. 2006-128 (October 2006) (holding that interview scoring forms were exempt as ACD material). The Council agreed, holding that the scoring forms were exempt as ACD material.

Here, this portion of the Complainant's OPRA request specifically asks for the interview score sheets of the candidates who applied to the Attendance Secretary Position at WMS for the 2022-2023 school year. The Custodian denied access to this portion of the Complainant's request in its entirety as confidential personnel information and under the ACD exemption. Following the filing of this complaint, the Custodian maintained in the SOI that he lawfully denied access to these records.

The Council's decision in Fegley, GRC 2006-91, supports that the Custodian's denial of access was lawful. Specifically, the deliberative nature of the interview score sheets prior to District's decision to hire certain individuals over others is apparent. Thus, it is clear that the requested records meet the two-prong test necessary to qualify as ACD material.

Accordingly, the responsive interview score sheets are exempt from disclosure under the ACD exemption. N.J.S.A. 47:1A-1.1; Fegley, GRC 2006-91. For this reason, the Custodian lawfully denied access to same. N.J.S.A. 47:1A-6.

June 23, 2023 OPRA Request

OPRA provides that:

Notwithstanding the provisions [OPRA] or any other law to the contrary, the personnel . . . records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access

[N.J.S.A. 47:1A-10].

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 are:

[A]n 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;

[P]ersonnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of

official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

[D]ata contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

[Id.]

The Council has addressed whether personnel records not specifically identified in OPRA were subject to disclosure. For instance, the Council has determined that records involving employee discipline or investigations into employee misconduct are properly classified as personnel records exempt from disclosure under N.J.S.A. 47:1A-10. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004), the Council found that records of complaints or internal reprimands against a municipal police officer were properly classified as personnel records encompassed within the provisions of N.J.S.A. 47:1A-10. For this reason, the Council concluded that “records of complaints filed against [the police officer] and/or reprimands [the officer] received are not subject to public access.” Id.; See also Wares v. Twp. of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015).

Here, the Complainant requested a “list of all (Closed) Documented Workplace Violence Issues for Employees: Asst. Supt., Principles, Teachers, Guidance Staff, & Support Staff (Not Students) [; and] List of all Outcomes by the Supt and/or Woodbridge School Board: Written Warnings, Reprimands; Suspensions; Terminations; Contract Non-Renewals” for the 2019, 2020, 2021, 2022 and 2023 Woodbridge Township school years. The Custodian requested that the Complainant either “narrow the scope” of his request or “be more specific,” with regard to Complainant’s use of the phrase “workplace violence.” However, absent a more specific request, the Custodian denied access to the requested records as confidential personnel information pursuant to N.J.S.A. 47:1A-1 and Section 10. The within Denial of Access Complaint ensued thereafter. In the SOI, the Custodian maintained the records were exempt from disclosure.

Upon review of the facts here and the available statutory and case law, the GRC agrees that a lawful denial of access occurred. Specifically, the records requested qualify as Section 10 records, which the GRC has long held are exempt from disclosure under N.J.S.A. 47:1A-10. See Merino, GRC 2003-110. For this reason, the GRC is satisfied that the Custodian lawfully denied access to this portion of the Complainant’s OPRA request.

Accordingly, the records sought in the Complainant’s June 23, 2023 OPRA request qualify as personnel records exempt from disclosure under OPRA. N.J.S.A. 47:1A-10; Merino, GRC 2003-110. Thus, the Custodian lawfully denied access to same. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests 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 requests 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. Absent the express consent from unsuccessful candidates, the resumes of unsuccessful candidates and other information concerning job applicants, inclusive of a list of candidates, are exempt from disclosure under OPRA by operation of Executive Order No. 26 (Gov. McGreevey, 2002). Thus, the Custodian lawfully denied access to said records. N.J.S.A. 47:1A-6.
3. The responsive interview score sheets are exempt from disclosure under the "inter-agency or intra-agency, advisory, consultative, or deliberative material" exemption. N.J.S.A. 47:1A-1.1; Fegley, Esq. v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2006-91 (December 2006). For this reason, the Custodian lawfully denied access to same. N.J.S.A. 47:1A-6.
4. The records sought in the Complainant's June 23, 2023 OPRA request qualify as personnel records exempt from disclosure under OPRA. N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004). Thus, the Custodian lawfully denied access to same. N.J.S.A. 47:1A-6.

Prepared By: Jennifer C. Howell
Staff Attorney

July 22, 2025