



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

DR. DALE G. CALDWELL
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

January 27, 2026 Government Records Council Meeting

John Paff
Complainant

Complaint No. 2023-168

v.

Township of Edison (Middlesex)
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:

1. Ms. Nill’s response is insufficient because she failed to provide a specific legal basis for denying access to the responsive meeting minutes. N.J.S.A. 47:1A-5(g). See DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009).
2. Notwithstanding Ms. Nill’s insufficient response, the Custodian lawfully denied access to the November 29, 2022 and March 9, 2023 Ethics Board meeting minutes responsive to the Complainant’s OPRA. N.J.S.A. 47:1A-6. Specifically, the minutes were in draft form and thus exempt from disclosure under the “inter-agency or intra-agency advisory, consultative, or deliberative material” exemption. See Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83, 89-90 (App. Div. 2018) (certif. denied, 233 N.J. 484 (2018)).

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**

**John Paff¹
Complainant**

GRC Complaint No. 2023-168

v.

**Township of Edison (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of minutes from the November 29, 2022 and March 9, 2023 Township of Edison (“Township”) Ethics Board meeting.³

Custodian of Record: Cheryl Russomanno
Request Received by Custodian: July 3, 2023
Response Made by Custodian: July 14, 2023
GRC Complaint Received: July 18, 2023

Background⁴

Request and Response:

On July 3, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 14, 2023, Clerk’s Office employee Jessica Nill responded in writing on behalf of the Custodian stating that per the Ethics Board Secretary, the responsive minutes “are not disclosable due to open cases.”

Denial of Access Complaint:

On July 18, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was unlawfully denied access to the requested minutes. The Complainant noted had Ms. Nill advised that the minutes were not yet approved, then nondisclosure would have been justifiable pursuant to Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83 (App. Div.), certif. denied, 233 N.J. 484 (2018). The Complainant noted that, instead, he received a response that the minutes could not be disclosed due to “open cases.”

¹ No legal representation listed on record.

² Represented by Brian P. Trelease, Esq., of Rainone, Coughlin, Minchello, LLC (Iselin, NJ).

³ The Complainant sought additional records that are not at issue this complaint.

⁴ 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 suggested that the Ethics Board may have gotten into the habit of discussing confidential matters in public due to the regular absence of attendees. The Complainant asserted that, even in this scenario, while an argument could be made that those individual discussions may be exempt the minutes should be disclosed with redactions. The Complainant noted that he hoped to gain a better understanding of the Township’s position through its response to this complaint.

The Complainant requested that the GRC find an unlawful denial of access occurred at least with respect to the redacted copies of the responsive minutes and order the Custodian to disclose them or to provide a specific lawful basis for denial. The Complainant also asked the GRC to consider him a “prevailing party” and order any relief deemed necessary.⁵

Statement of Information:

On August 11, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 3, 2023. The Custodian certified that Ms. Nill responded in writing on her behalf on July 14, 2023, denying access to the responsive minutes due to “open cases.”

The Custodian contended she lawfully denied access to the responsive minutes because they were in draft form at the time of the OPRA request and thus they were exempt as “inter-agency or intra-agency advisory, consultative, or deliberative [(“ACD”)] material” pursuant to N.J.S.A. 47:1A-1.1 and Libertarians, 453 N.J. Super. 83. The Custodian acknowledged Ms. Nill’s response was ambiguous but maintained the ACD exemptions clearly apply based on applicable case law. The Custodian noted that the minutes would be made available to the public once they have been approved by the Ethics Board.

The Custodian also argued that the Complainant is not entitled to an award of attorney’s fees because he is a *pro se* litigant. Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019); Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2005-71 (April 2006).

Additional Submissions:

On August 14, 2023, the Complainant submitted a rebuttal to the SOI. Therein, the Complainant stated the GRC’s “Handbook for Records Custodians” (Seventh Edition – November 2022) indicates that a custodian has an obligation to provide a specific lawful basis for denial. The Complainant averred that a clear and concise denial is crucial in giving a requestor the ability to evaluate the likelihood of success in a complaint in Superior Court or before the GRC. The Complainant further averred that failing to provide such a denial inhibits a requestor’s ability to make an informed decision on filing a complaint.

The Complainant contended here that the Township’s response was not “admittedly ambiguous” as stated in the SOI, but rather it was “outright incorrect.” The Complainant noted that, as the executive director for Libertarians, he has intimate knowledge of the Libertarians case

⁵ The Complainant also mentioned a redaction in another set of minutes disclosed to him. However, the Complainant noted that he was not challenging the redaction. Thus, it will not be addressed here.

and would not have filed this complaint if the Custodian responded that the minutes were still in draft form.

The Complainant finally noted the Custodian's prevailing party argument is superfluous because he never aimed to obtain an award of attorney's fees.⁶

Analysis

Sufficiency of Response

OPRA provides that if a "custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor . . .* on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5(g) (emphasis added). A custodian's failure to do so results in an insufficient response and a violation of OPRA. The Council has held that for a denial of access to comply with OPRA, it must be specific and sufficient to prove that a custodian's denial is authorized by OPRA. See DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Morris v. Trenton Police Dep't (Mercer), GRC Complaint No. 2007-160 (May 2008).

Here, Ms. Nill responded to the Complainant's OPRA request denying access to the responsive minutes "due to open cases." This complaint followed, wherein the Complainant set forth a presumed position due to Ms. Nill's vague response. In the SOI, the Custodian certified that the minutes were not disclosed because they were still in draft form and thus exempt under the ACD exemption. The Complainant submitted a sur-reply taking issue with the Township's failure to directly deny access on those grounds. Prevailing case law supports that Ms. Nill's failure to provide a specific lawful basis for denial constitutes an insufficient response.

Therefore, Ms. Nill's response is insufficient because she failed to provide a specific legal basis for denying access to the responsive meeting minutes. N.J.S.A. 47:1A-5(g). See DeAppolonio, GRC 2008-62.

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 excludes from the definition of a government record "[ACD] material." N.J.S.A. 47:1A-1.1. It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the "deliberative process privilege."

⁶ The GRC will not address the prevailing party issue because the Complainant has noted that he was not seeking a fee award.

In Libertarians, 453 N.J. Super. 83, the Appellate Division discussed the deliberative process privilege at length regarding a request for draft meeting minutes, stating:

The applicability of the deliberative process privilege is government by a two-prong test. The judge must determine both that a document is (1) “pre-decisional,” meaning it was “generated before the adoption of an agency’s policy or decision;” and (2) deliberative, in that it “contain[s] opinions, recommendations, or advice about agency policies.” [Educ. Law Ctr. v. Dep’t of Educ., 198 N.J. 274, 276 (2009) (quoting Integrity, 165 N.J. at 83)]. If a document stratifies both prongs, it is exempt from disclosure under OPRA pursuant to the deliberative process privilege.

[Id. at 89-90.]

Regarding the first prong, the court stated that “a draft is not a final document. It has been prepared for another person or persons’ editing and eventual approval.” Id. at 90. Therefore, the court held that by their very nature, draft meeting minutes are pre-decisional since they are subject to revision and not yet approved for public release. Id. at 90-91.

Regarding the second prong, the court held that “the document must be shown to be closely related to the ‘the formulation or exercise of . . . policy-oriented judgment or [to] the process by which policy is formulated.’” Ciesla v. N.J. Dep’t of Health & Sr. Servs., 429 N.J. Super. 127, 138 (App. Div. 2012) (quoting McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 619-20 (App. Div. 2010)). Id. at 91. The court found that the requested draft minutes, as compiled by the writer in attendance at the meeting, were subject to additions, suggestions, and other edits from the members of the public body. Id. Thus, the draft minutes satisfied the second prong of the test. Id. at 92

Here, the Complainant filed this complaint after Ms. Nill provided an insufficient response, which asserted that minutes may exist in draft form but failed to specify a clear basis for denial; i.e., that the records were exempt under the ACD exemption. In the SOI, the Custodian certified that the responsive minutes were still in draft form and thus exempt under the ACD exemption. N.J.S.A. 47:1A-1.1. The Complainant filed an SOI rebuttal reiterating his awareness that precedential case law supports a denial of draft minutes and expressing frustration with Ms. Nill’s response. The GRC confirms the parties’ concurrence that OPRA and precedential case law supports the non-disclosure of draft documents. Libertarians, 453 N.J. Super. at 89-90.

Accordingly, notwithstanding Ms. Nill’s insufficient response, the Custodian lawfully denied access to the November 29, 2022 and March 9, 2023 Ethics Board meeting minutes responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the minutes were in draft form and thus exempt from disclosure under the ACD exemption. See Libertarians, 453 N.J. Super. 83.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Ms. Nill’s response is insufficient because she failed to provide a specific legal basis for denying access to the responsive meeting minutes. N.J.S.A. 47:1A-5(g). See DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009).
2. Notwithstanding Ms. Nill’s insufficient response, the Custodian lawfully denied access to the November 29, 2022 and March 9, 2023 Ethics Board meeting minutes responsive to the Complainant’s OPRA. N.J.S.A. 47:1A-6. Specifically, the minutes were in draft form and thus exempt from disclosure under the “inter-agency or intra-agency advisory, consultative, or deliberative material” exemption. See Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83, 89-90 (App. Div. 2018) (certif. denied, 233 N.J. 484 (2018)).

Prepared By: Frank F. Caruso
Executive Director

January 20, 2026⁷

⁷ This complaint was prepared for adjudication at the Council’s January 28, 2025 meeting, but could not be adjudicated due to lack of quorum.