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

FINAL DECISION

March 25, 2025 Government Records Council Meeting

John Paff
Complainant

Complaint No. 2023-193

v.

Borough of East Newark (Hudson)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 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 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). The GRC will not address the additional timeliness violations because the subject OPRA request was already “deemed” denied as of June 22, 2023.
2. The Custodian’s August 8, 2023 response, through Counsel, to the Complainant’s OPRA request was insufficient because he failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. Regarding OPRA request item No. 4, the Custodian’s failure to conduct a reasonable search resulted in an insufficient response. See Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008); Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). Specifically, the Custodian failed to locate the fifth Form until a later time and in response to a separate OPRA request: that record has since been disclosed. However, the current Custodian need not disclose the fifth Form responsive to OPRA request item No. 4 because the Complainant is already in possession of it.
4. Regarding OPRA request item Nos. 5 and 6, the Custodian also conducted an unreasonable search by utilizing an incorrect set of perimeters. Schneble v. N.J. Dep’t

of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008); see also DiFelice v. Monroe Twp. Pub. Sch. (Gloucester), GRC Complaint No. 2017-233 (Interim Order dated August 27, 2019). Thus, the Custodian may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The current Custodian shall perform a new search to identify the three (3) most recent CDR-1, CDR-2, Forms, or other forms on or after December 1, 2021 and either disclose them to the Complainant, advise if a valid lawful basis exists for withholding any, or advise that no responsive records for one or both OPRA request items existed.

5. **The Custodian shall comply with conclusion No. 4 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).**
6. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request item No. 1. Specifically, the current Custodian certified in the SOI, and the record reflects, that no Forms responsive to the OPRA request item 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 25th Day of March 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: March 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

**John Paff¹
Complainant**

GRC Complaint No. 2023-193

v.

**Borough of East Newark (Hudson)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. The five (5) most recent “Special Forms of Complaint and Summons” (“Forms”) issued by Officer Michael O’Donnell.
2. The five (5) most recent Forms issued by Officer Billy Erezuma.
3. The five (5) most recent Forms issued by Officer Junior Fiori.
4. The five (5) most recent Forms issued by Officer Brian Aparicio.
5. The three (3) most recent CDR-1, CDR-2, Forms, or other forms of complaint that cited violations of § 3-3, Loitering, issued on or after December 1, 2021.
6. The three (3) most recent CDR-1, CDR-2, Forms, or other forms of complaint that cited violations of § 3-18.1, Disorderly Conduct, issued on or after December 1, 2021.

Custodian of Record: Kenneth Louis³

Request Received by Custodian: May 21, 2023

Response Made by Custodian: August 8, 2023

GRC Complaint Received: August 14, 2023

Background⁴

Request and Response:

On Sunday, May 21, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 22, 2023, the Complainant e-mailed the Borough of East Newark (“Borough”) Council Chair and Custodian’s Counsel advising that he had not received a response to his OPRA request. The Complainant requested that the matter be investigated, noting that he had until July 28, 2023 to file a Denial of Access Complaint.

¹ No legal representation listed on record.

² Represented by Michael A. Cifelli, Esq., of Hardin, Kundla, McKeon, & Poletto, P.A. (Springfield, NJ).

³ The current custodian of record is Dr. Cosmo A. Cirillo.

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.

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Later on June 22, 2023, approximately twenty-one (21) business days after receipt of the OPRA request, Custodian's Counsel e-mailed the Complainant stating that he would "look into a response." Counsel also sought clarification as to the exact Forms the Complainant sought. The Complainant responded that he was seeking paper tickets. The parties confirmed in subsequent e-mails that the Forms sought were "SC" tickets.

On July 17, 2023, fifteen (15) business days after receipt of the clarification, Custodian's Counsel e-mailed the Complainant apologizing for the delay and asking for another week to provide a formal response. Counsel stated he believed that not many responsive records existed. On July 19, 2023, the Complainant responded, agreeing to the extension. On August 4, 2023, the Complainant e-mailed Custodian's Counsel seeking a status update.

On August 8, 2023, approximately eleven (11) business day after the expiration of the one (1) week extension, Custodian's Counsel responded in writing on behalf of the Custodian disclosing eleven (11) pages of records with redactions of personal information, noting that the quality of some of the pages were lacking in quality because they were imprinted on carbon paper.

Denial of Access Complaint:

On August 14, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant contended that the Custodian failed to properly respond to his OPRA request by not responding to each item individually, as required per Arena v. Essex Cnty. Sheriff's Office, GRC Complaint No. 2019-47 (November 2020). The Complainant argued that Custodian Counsel's response simply stated: "Attached is the Borough's response to your OPRA request." The Complainant asserted that the disclosure appears to indicate that the Borough did not disclose records responsive to his OPRA request item Nos. 1, 5, or 6, with no explanation as to whether any responsive records exist. The Complainant also asserted that the Borough disclosed only four (4) Forms responsive to OPRA request item No. 4.

The Complainant requested that the Council: 1) find the Borough's response insufficient because it failed to address each OPRA request item; and 2) order the Custodian to address OPRA request item Nos. 1, 5 and 6 and disclose any non-exempt records responsive thereto.

Amended Denial of Access Complaint:

On September 25, 2023, the Complainant filed an Amended Denial of Access Complaint with the GRC. Therein, the Complainant stated that he was filing the amendment in accordance with N.J.A.C. 5:105-2.4(j) to seek additional relief due to the Custodian's failure to submit a Statement of Information ("SOI").⁵

The Complainant asserted that when he filed his complaint, he presumed that the Borough's failure to fully respond to the subject OPRA request was an oversight and that it would defend itself by filing a timely SOI and attempting to negotiate a settlement. The Complainant

⁵ On August 24, 2023, the GRC sent an SOI request to the Custodian with a deadline date of September 8, 2023. After not receiving a response, the GRC sent the Custodian a "No Defense Letter" on September 18, 2023 providing three (3) additional business days, or until September 21, 2023, to submit an SOI. As of the date of the Amended Denial of Access Complaint, the GRC had not received an SOI from the Borough.

asserted that he was “astonished” when the Borough failed to submit an SOI. The Complainant stated that, after the GRC sent out its “No Defense Letter” on September 18, 2023, he e-mailed the Custodian’s Counsel a letter informing him of the Borough’s failure to submit an SOI “to eliminate any chance that [Counsel] might be unaware” of said failure.⁶

The Complainant contended that, given the lack of response, he believed the Borough may be intentionally suppressing records responsive to OPRA request item Nos. 5 and 6 to hide their illegal enforcement of municipal codes that are preempted by State law. The Complainant noted that Borough officials were aware of his interest in the relevant code provisions because he sent an e-mail to them on July 19, 2023, seeking repeal thereof. The Complainant alleged that the Borough may have avoided filing an SOI, understanding that the GRC may be required to refer the complaint to the Office of Administrative Law (“OAL”), as was done in Scheeler, Jr. v. Greenwich Twp. (Warren), GRC Complaint No. 2015-178 (Interim Order dated July 26, 2016). The Complainant contended that such a move could significantly delay adjudication, citing Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2012-284, *et seq.* (Interim Order dated March 25, 2024).⁷

The Complainant thus stated that, in addition to the relief sought in his original complaint, he was seeking the following additional relief:

1. A holding that the Borough violated N.J.A.C. 5:105-2.4(a) by failing to submit an SOI.
2. An Interim Order compelling the Borough to submit an SOI.
3. A finding that the Custodian, or other officials, employees, or custodians, knowingly and willfully violated OPRA under the totality of circumstances warranting the imposition of a fine.
4. A holding that the Complainant is a prevailing party entitled to an award of attorney’s fees, should he ultimately retain the services of an attorney.

Statement of Information:

On October 12, 2023,⁸ the current Custodian filed an SOI. The current Custodian certified that the Custodian received the Complainant’s OPRA request on May 21, 2023. The current Custodian certified that it was his understanding that the search for responsive records involved the Police Department reviewing the “Computer-Aided Dispatch System” for special complaints and using the numbers to locate the corresponding ticket receipts. The current Custodian noted that if a ticket receipt is not in the Police Chief’s file, then no ticket was issued, and it remains in the individual officer’s ticket book. The current Custodian certified that the Borough responded in writing on August 8, 2023, disclosing records responsive to OPRA request item Nos. 2, 3, and 4. The current Custodian certified that no records responsive to OPRA request item Nos. 1, 5, and 6 from the officers identified in the former request items exist. The current Custodian noted that for

⁶ The Complainant also discussed the Borough’s alleged failure to timely respond to a separate OPRA request not at issue in this complaint.

⁷ At the time of this submission, Carter, GRC 2012-284, *et seq.* was awaiting adjudication at the OAL. However, this consolidated complaint was returned from the OAL as withdrawn on February 7, 2025, and subsequently dismissed by the Council at its February 18, 2025 meeting.

⁸ Custodian’s Counsel sought, and the GRC granted, an extension of time until October 12, 2023, to submit the requested SOI.

OPRA request item No. 1, Officer O'Donnell did not issue any summonses because he "served in a supervisory role for many years." The current Custodian further noted that a 2020 summons falling outside the time frame identified in item No. 6 was included in the disclosure even though it was not responsive.

The current Custodian averred that during the pendency of the subject OPRA request, the Borough was undergoing a significant transition within both the Clerk's Office and Police Department. The current Custodian stated that that Custodian was the sole employee of the Clerk's Office, a fact that affected his ability to timely respond to the subject OPRA request. The current Custodian certified that all records located were disclosed to the Complainant, Officer O'Donnell had no summonses, and a secondary search revealed no additional responsive records.⁹

Additional Submissions:

On October 16, 2023, the Complainant submitted a sur-reply to the SOI. Therein, the Complainant stated that "[a]fter 144 days" since he filed the subject OPRA request, the Borough finally submitted an SOI sufficient to "address [his] initial request." The Complainant further asserted that, had the Borough's August 8, 2023 response been sufficient, this complaint might have been unnecessary. The Complainant asserted that, nonetheless, he continued to dispute the "inadequate" response to OPRA request item Nos. 2 through 6.

The Complainant reiterated from his prior submissions that the Borough initially provided an insufficient response. The Complainant argued that the SOI only further supports his position; however, he is no longer left to wonder if records exist to OPRA request item Nos. 1, 5, and 6. The Complainant also argued that the response to OPRA request item No.4 should have been clear that only four (4) records existed. The Complainant noted that this turned out to be incorrect anyway because a fifth (5th) Form dated May 21, 2023, at 4:14 a.m., which was technically responsive to the subject OPRA request, was later disclosed as part of the SOI.

The Complainant also disputed the current Custodian's SOI response that no records responsive to OPRA request item Nos. 5 and 6 "for the identified officers" existed. The Complainant stated that these OPRA request items were not limited to the officers identified in item Nos. 1 through 4. The Complainant argued that the Borough's search was not sufficient and could have missed responsive records. The Complainant thus requested that the GRC require the Borough to submit an amended SOI to ensure a thorough search was conducted.

The Complainant finally noted that he was withdrawing his request for the GRC to find a knowing and willful violation. The Complainant asserted that although the Borough "had its troubles," he was satisfied that they acted "in good faith."

⁹ The current Custodian also addressed how the Borough handled another of the Complainant's OPRA requests that is not at issue in this complaint.

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).¹⁰ 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 to the Borough on May 21, 2023. However, the Borough did not respond until Custodian's Counsel acknowledged receipt and sought clarification on June 22, 2023, approximately twenty-one (21) business day after receipt of the OPRA request. The Custodian, through Counsel, subsequently committed further timeliness violations by failing to respond to the request for clarification until the fifteenth (15th) business day after receipt thereof, and the eleventh (11th) business day after an ensuing extension request. In the SOI, the current Custodian certified to the date the OPRA request was received and that no records were disclosed until August 8, 2023. Thus, the evidence of record supports a "deemed" denial finding as of June 22, 2023.

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. The GRC will not address the additional timeliness violations because the subject OPRA request was already "deemed" denied as of June 22, 2023.

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). In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that "[t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g)." See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

¹⁰ 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.

Here, the Custodian responded in writing through Counsel on August 8, 2023, disclosing eleven (11) pages of records. However, the response e-mail failed to address each request item. Instead, Custodian's Counsel provided records within the e-mail response, but did not indicate the request items to which said records were responsive. Further, Counsel did not indicate whether records responsive to the remaining items were denied or did not exist. The facts here are on point with those in Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian's August 8, 2023 response, through Counsel, to the Complainant's OPRA request was insufficient because he failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff, GRC 2007-272.

Sufficiency of Search

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.

Further, it is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found additional records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Moreover, in Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013), the custodian initially responded to the complainant's request, producing four (4) responsive records and stating that no other records existed. However, after receiving the denial of access complaint, the custodian performed another search and discovered several other records. Id. In accordance with Schneble, the Council held that the custodian failed to perform an adequate initial search and unlawfully denied access to those additional records. Id.

Here, the Complainant's OPRA request item Nos. 1 through 4 sought sets of the five (5) most recent Forms completed by four (4) individual officers. OPRA request item Nos. 5 and 6 sought the three (3) most recent CDR-1, CDR-2, Forms, or other forms related to separate code violations since December 1, 2021. On August 8, 2023, through Counsel, the Custodian disclosed five (5) Forms for two (2) officers identified in OPRA request Nos. 2 and 3, and four (4) Forms for the officer identified in OPRA request item No. 4. The response did not address OPRA request item Nos. 1, 5, and 6. This complaint ensued, wherein the Complainant made several arguments, including that the Borough failed to address the potential existence of the fifth Form responsive to OPRA request item No. 4 or any records responsive to item Nos. 1, 5, and 6. In his amended

complaint, the Complainant reiterated the Custodian's failure to address the absence of a fifth Form responsive to OPRA request item No. 4 and OPRA request item Nos. 5 and 6 in their entirety.

In the SOI, the current Custodian certified that no records responsive to OPRA request item Nos. 5, and 6 existed, noting that the Borough conducted a search based on the officers identified within the request. The current Custodian further affirmed that all records responsive to the OPRA request were provided and that another search yielded no additional responsive records.

In the SOI sur-reply, the Complainant stated that a fifth Form responsive to OPRA request item No. 4 written in the early morning hours on the day he submitted the request existed and should have been disclosed. The Complainant noted that he received it as part of a separate OPRA request and attached same to the submission. The Complainant also contended that the Borough performed an insufficient search for records responsive to OPRA request Item Nos. 5 and 6 by limiting it to the officers identified in same.

Regarding OPRA request item No. 4, the evidence of record supports that although the Borough disclosed only four (4) Forms, a fifth did exist at the time of the OPRA request. The fact that it was composed on the same day the Complainant submitted his OPRA request does not change this fact because Officer Aparicio created the Form hours before submission. There is no evidence in the record to suggest that the Borough's search would not yield the Form for disclosure prior to responding on August 8, 2023, nearly three (3) months after the Complainant submitted his OPRA request.

Regarding OPRA request item Nos. 5 and 6, the GRC does not agree that the Custodian conducted a sufficient search to locate all potentially responsive records. The current Custodian admitted that the Borough only sought CDR-1, CDR-3, Forms, and other forms created solely by the officers identified in OPRA request Nos. 1 through 4. However, a plain reading of both items strongly indicates that the Complainant did not include them as a parameter. Instead, the Complainant clearly sought those items related to two (2) municipal codes for a certain time period. By inserting an additional limitation not included in the actual OPRA request, namely the officers identified earlier in the OPRA request, the Borough may have failed to locate records responsive to these items. See DiFelice v. Monroe Twp. Pub. Sch. (Gloucester), GRC Complaint No. 2017-233 (Interim Order dated August 27, 2019) (holding that the custodian conducted an insufficient search for e-mails by omitting the subject/content included in the OPRA request).

Accordingly, regarding OPRA request item No. 4, the Custodian's failure to conduct a reasonable search resulted in an insufficient response. See Schneble, GRC 2007-220; Weiner, GRC 2013-52. Specifically, the Custodian failed to locate the fifth Form until a later time and in response to a separate OPRA request: that record has since been disclosed. However, the current Custodian need not disclose the fifth Form responsive to OPRA request item No. 4 because the Complainant is already in possession of it.

Regarding OPRA request item Nos. 5 and 6, the Custodian also conducted an unreasonable search by utilizing an incorrect set of perimeters. Schneble, GRC 2007-220; see also DeFelice, GRC 2017-233. Thus, the Custodian may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The current Custodian shall perform a new search to identify the three (3) most recent CDR-1, CDR-2, Forms, or other forms on or after December 1, 2021 and either disclose

them to the Complainant, advise if a valid lawful basis exists for withholding any, or advise that no responsive records for one or both OPRA request items existed.

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.

Initially, the GRC notes that it will not be addressing OPRA request item Nos. 2 and 3 here on the basis that the Complainant identified the items as “presumably fulfilled” in the Denial of Access Complaint. While these items were pertinent to the question of timeliness and response sufficiency addressed above, the Complainant did not pursue the substance of the August 8, 2023 disclosure thereto. Thus, the GRC will proceed to address the last remaining item at issue, which is OPRA request item No. 1.

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. 1 sought the five (5) most recent Forms issued by Officer O’Donnell. After the Custodian’s initial response, which did not address this item, and subsequent complaint filing, the current Custodian certified that no responsive records exist. The current Custodian noted that Officer O’Donnell issued no summonses because he had been in a supervisory role for many years. Additionally, there is no evidence in the record to refute the current Custodian’s SOI statements. Thus, the GRC is compelled to find that Pusterhofer applies here.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request item No. 1. Specifically, the current Custodian certified in the SOI, and the record reflects, that no Forms responsive to the OPRA request item exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

In closing, the Complainant asked in his amended Denial of Access Complaint that the Council to consider him a prevailing party subject to reasonable attorney’s fees should he retain such a service. However, to date, the Complainant has not notified the GRC that he retained an attorney. Thus, the GRC will not address this issue because of the non-existence of representation.¹¹

¹¹ Both New Jersey’s courts and the Council have held that a *pro se* complainant is not entitled to attorney’s fees under OPRA. N.J.S.A. 47:1A-6; 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)

John Paff v. Borough of East Newark (Hudson), 2023-193 – Findings and Recommendations of the Executive Director

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 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). The GRC will not address the additional timeliness violations because the subject OPRA request was already "deemed" denied as of June 22, 2023.
2. The Custodian's August 8, 2023 response, through Counsel, to the Complainant's OPRA request was insufficient because he failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. Regarding OPRA request item No. 4, the Custodian's failure to conduct a reasonable search resulted in an insufficient response. See Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008); Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). Specifically, the Custodian failed to locate the fifth Form until a later time and in response to a separate OPRA request: that record has since been disclosed. However, the current Custodian need not disclose the fifth Form responsive to OPRA request item No. 4 because the Complainant is already in possession of it.
4. Regarding OPRA request item Nos. 5 and 6, the Custodian also conducted an unreasonable search by utilizing an incorrect set of perimeters. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008); see also DiFelice v. Monroe Twp. Pub. Sch. (Gloucester), GRC Complaint No. 2017-233 (Interim Order dated August 27, 2019). Thus, the Custodian may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The current Custodian shall perform a new search to identify the three (3) most recent CDR-1, CDR-2, Forms, or other forms on or after December 1, 2021 and either disclose them to the Complainant, advise if a valid lawful basis exists for withholding any, or advise that no responsive records for one or both OPRA request items existed.
5. **The Custodian shall comply with conclusion No. 4 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).**
6. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request item No. 1. Specifically, the current Custodian certified

in the SOI, and the record reflects, that no Forms responsive to the OPRA request item 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: Frank F. Caruso
Executive Director

March 18, 2025