



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

July 29, 2025 Government Records Council Meeting

Caleb L. McGillvary
Complainant

Complaint No. 2023-212

v.

NJ Office of the Governor
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), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. 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. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA requests 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**

**Caleb L. McGillvary¹
Complainant**

GRC Complaint No. 2023-212

v.

**N.J. Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “[a]ll State incentives, including but not limited to, State and Federal tax rebates offered to Netflix, Inc.” or any of its entities from January 1, 2021, through August 17, 2023.

Custodian of Record: Valentina M. DiPippo

Request Received by Custodian: August 24, 2023

Response Made by Custodian: September 8, 2023

GRC Complaint Received: September 11, 2023

Background³

Request and Response:

On August 17, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 8, 2023, the tenth (10th) business day after receipt of the OPRA request, the Custodian responded in writing apologizing for the delayed response. The Custodian stated that the Office of the Governor (“Office”) is not the custodian of record for the records sought. The Custodian directed the Complainant to the New Jersey Economic Development Authority (“NJEDA”), which is part of the New Jersey Department of Treasury.

Denial of Access Complaint:

On September 11, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).⁴ The Complainant asserted that he sent an OPRA request to the Office via certified mail on August 17, 2023, and received a return receipt indicating that it

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Elizabeth Tingley.

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 Complainant executed his complaint on September 5, 2023 and sent same to the GRC via U.S. mail.

was delivered on August 22, 2023. The Complainant stated that, to date, he did not receive a response from the Custodian. The Complainant argued that State laws require the Office to maintain incentive records, and he was entitled to access them under OPRA.

Statement of Information:

On October 13, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 24, 2023. The Custodian noted that, based on this receipt date, her final day to respond was September 5, 2023. The Custodian affirmed that upon review she determined that the Office was not the custodian of the records sought. The Custodian certified that she responded in writing on September 8, 2023, denying the request and referring the Complainant to the NJEDA as the proper custodian for the records sought.

The Custodian argued that this complaint should be dismissed as moot because she did respond in writing, albeit with a brief inadvertent delay due to Labor Day, directing the Complainant to the NJEDA. The Custodian certified that the Office did not maintain responsive records because the NJEDA rather than the Office was the proper custodian for tax incentive records. The Custodian argued that her response directing the Complainant to the NJEDA was consistent with N.J.S.A. 47:1A-5(h) and Owoh v. City of Camden, 2023 N.J. Super. Unpub. LEXIS 597 (App. Div. 2023). The Custodian concludes that, because her response was proper, no further relief can be given here and the complaint is moot.

The Custodian also argued that she did not knowingly and willfully violate OPRA. The Custodian asserted that her inadvertent delay in responding cannot rise to such a level, as discussed in Gordon v. City of Orange (Essex), 2015 N.J. Super. Unpub. LEXIS 1773 (App. Div. 2015). The Custodian noted that upon realizing she had not responded, she immediately undertook the task of doing so and apologized for the delay.

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).

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.

Here, the Complainant caused his complaint to be filed on September 5, 2023 arguing that the Custodian failed to respond to his OPRA request. Thereafter, on September 8, 2023, the tenth (10th) business day after receipt of the subject OPRA request, the Custodian responded in writing apologizing for the delayed response. In the SOI, the Custodian admitted that she failed to respond by the seventh (7th) business day, which was September 5, 2023. Thus, by fact and the Custodian's own admittance, a "deemed" denial of access occurred here.

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.

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 submitted an OPRA request to the Office seeking tax incentive information. The Custodian subsequently responded, albeit untimely, stating that the Office was not the proper custodian and the Complainant should submit his OPRA request to the NJEDA.

Upon review, the GRC is persuaded that no unlawful denial of access has occurred because the evidence of record supports that no records exist. The Custodian has certified that no records existed and that the NJEDA was the proper agency maintaining tax incentive records. Further, the Complainant has not provided any evidence to refute this certification. Thus, 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. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to these OPRA requests 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), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

2. 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. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA requests 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

July 22, 2025