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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

July 29, 2025 Government Records Council Meeting

Caleb L. McGillvary
Complainant

Complaint No. 2023-213

v.

Port Authority of NY & NJ
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 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 his burden of proof that he 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. 2023-213

v.

**Port Authority of NY & NJ²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “[a]ny and all permits, licenses, or authorities to operated granted to Aviloop or Jeffrey K. Epstein” at Teterboro Airport and all records associated therewith, including applications, requests, logs, and reports from January 1, 1995 through December 31, 2014.

Custodian of Record: William Shalewitz

Request Received by Custodian: August 11, 2023

Response Made by Custodian: None.

GRC Complaint Received: September 11, 2023

Background³

Request and Response:

On July 31, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On September 11, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he did not receive a response to his OPRA request. The Complainant contended that State laws assign the Port Authority of NY & NJ (“PANYNJ”) with oversight over Teterboro Airport, and he is entitled to the records sought under OPRA.

¹ No legal representation listed on record.

² No legal representation listed on record.

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:

On October 20, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 11, 2023. The Custodian certified that he did not respond to the subject OPRA request.

The Custodian asserted that, although the Complainant’s OPRA request was “unclear and overly broad,” PANYNJ forwarded same to the Aviation Department. The Custodian affirmed that the Aviation Department conducted a diligent search and subsequently informed the PANYNJ that no records could be located.

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).⁴ 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 filed the instant complaint arguing that the Custodian failed to respond to the subject OPRA request. In the SOI, the Custodian confirmed that he did not respond to the OPRA request. Thus, by fact and the Custodian’s own admission, a “deemed” denial of access occurred here.

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.

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

⁴ 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.

“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 records related to Aviloop and Jeffrey K. Epstein operations at Teterboro Airport. Although the Custodian did not respond to the subject OPRA request, he subsequently certified in the SOI that the Aviation Department could not locate any responsive records.

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 were located as a result of the Aviation Department’s search. 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 his burden of proof that he 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 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).
2. Notwithstanding the “deemed” denial of access, the Custodian has borne his burden of proof that he 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