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JACQUELYN A. SUÁREZ  
Commissioner

## FINAL DECISION

### July 29, 2025 Government Records Council Meeting

Rafael Martinez  
Complainant

Complaint No. 2023-215

v.

City of Long Branch (Monmouth)  
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). The GRC will not address the additional timeliness violations because the subject OPRA request was already “deemed” denied as of July 12, 2023.
2. The Custodian did not unlawfully deny access to the requested e-mails because she, through Ms. Gambacorto, disclosed them in the format maintained by the City and that represented “some other meaningful medium.” N.J.S.A. 47:1A-5(d); N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), 2019 N.J. Super. Unpub. LEXIS 590 (App. Div. 2019). Further, there is no evidence in the record to support that the Complainant was denied access to any information as a result of the disclosure in .pdf format. Wolosky v. Twp. of Sparta, 2012 N.J. Super. Unpub. LEXIS 2717 (App. Div. 2012).
3. The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Custodian, through Ms. Gambacorto, ultimately disclosed to the Complainant the responsive records over several e-mails between July 28, 2023, and August 21, 2023. Further, the Custodian did not violate OPRA by providing those records in .pdf format. N.J.S.A. 47:1A-5(d). Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and

deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 29<sup>th</sup> 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**

**Rafael Martinez<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-215**

**v.**

**City of Long Branch (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of e-mails between seven (7) accounts regarding the Complainant's OPRA, Common Law, and Freedom of Information Act ("FOIA") requests submitted to the City of Long Branch ("City") from April 1, 2023 to present, including:

1. Documents
2. E-mails
3. Phone Records
4. Texts
5. Audio Recordings
6. Video Recordings
7. Communications
8. Attachments

**Custodian of Record:** Heather Capone

**Request Received by Custodian:** June 28, 2023

**Response Made by Custodian:** July 12, 2025

**GRC Complaint Received:** September 11, 2023

**Background<sup>3</sup>**

**Request and Response:**

On June 28, 2023, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records.<sup>4</sup> The Complainant noted that the final day to respond was July 10, 2023. On July 11, 2023, the Complainant e-mailed the Custodian

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<sup>1</sup> No legal representation listed on record.

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

<sup>3</sup> 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.

<sup>4</sup> This OPRA request appears to be an amended version of an earlier OPRA request submitted in April 2023 and amended several times. The Complainant identified this specific amended OPRA request as the one at issue in this complaint.

stating that she failed to respond to the subject OPRA request and thus violated OPRA. On July 12, 2023, the ninth (9<sup>th</sup>) business day after receipt of the OPRA request, Confidential Secretary Dawn Gambacorto responded in writing on behalf of the Custodian as invalid.

Later on July 12, 2023, the Complainant responded amending his OPRA request by reducing the number of senders/recipients to three (3) individuals. On July 14, 2023, Ms. Gambacorto acknowledged receipt of the request on that day. On July 25, 2023, Ms. Gambacorto responded in writing to the amended OPRA request stating that an extension of time to respond through August 1, 2023, was necessary “to compile responsive records.” On July 26, 2023, the Complainant e-mailed Ms. Gambacorto seeking a reason for the extension, noting that he will file a complaint challenging any denial of access. On the same day, Ms. Gambacorto responded, highlighting from her prior e-mail that the extension was needed to compile records. On July 28, 2023, Ms. Gambacorto disclosed responsive records.

Later on July 28, 2023, the Complainant responded objecting to the records disclosed as “not the records requested.” The Complainant, citing Paff v. Galloway Twp., 229 N.J. 340 (2017), contended that he sought copies of the records in “[u]nconverted [o]riginal email communications with it’s (sic) [e-]mail logs intact.” On August 4, 2023, the Complainant e-mailed Ms. Gambacorto contending that she failed to disclose responsive records within the August 1, 2023 extended deadline. The Complainant stated that he would file a complaint based on the perceived denial of access. On August 8, 2023, Ms. Gambacorto replied, asking for seven (7) business days to review and respond to Complainant’s most recent e-mail. On the same day, the Complainant responded by objecting to any additional time. On August 9, 2023, the Complainant reiterated his objection.

On August 10, 2023, Ms. Gambacorto disclosed responsive records through two (2) links. On August 11, 2023, the Complainant e-mailed Ms. Gambacorto again disputing that the records disclosed were not the records sought. The Complainant contended that the disclosed records were converted into a .pdf format and did not represent the original, unconverted e-mails. On August 14, 2023, Ms. Gambacorto again disclosed responsive records through two (2) links. On August 17, 2023, the Complainant again disputed the response based on the format in which the e-mails were disclosed. Later that day, Ms. Gambacorto disclosed more records through three (3) links. On August 18, 2023, the Complainant continued to dispute the disclosures based on the formal issue. Later that day, Ms. Gambacorto disclosed additional records over several links in multiple e-mails, each of which the Complainant continued to dispute based on the format issue.

On August 21, 2023, Ms. Gambacorto disclosed additional records through four (4) links

#### 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 his OPRA request sought “EML files of [u]nconverted [o]riginal email communications with it’s (sic) [e-]mail logs intact.” The Complainant contended that the City failed to properly respond to his OPRA request by unreasonably denying access to responsive records and failing to provide a specific lawful basis for the denial. The Complainant further contended that the City failed to identify the location where the requested records were located and sought unreasonable extensions of time. The Complainant

contended that the Custodian, other employees, public officials and officers knowingly and willful violated OPRA.

### Statement of Information:

On October 18, 2023, the Custodian filed a Statement of Information (“SOF”) attaching a certification from Information Technology head Will Bahamonde. The Custodian certified that she received the Complainant’s OPRA request on June 28, 2023. The Custodian certified that Ms. Gambacorto corresponded in writing with the Complainant over the next two (2) months disclosing responsive records in .pdf format. The Custodian stated that over that time, the original OPRA request evolved into the current issue before the Council, which is that the City failed to disclose the responsive e-mails in .eml format.

The Custodian contended that this complaint is an attempt to force the City to create a new record to satisfy his OPRA request. The Custodian avers that the City produced responsive records in accordance with N.J.S.A. 47:1A-5(d) because it does not maintain the responsive e-mails in .eml format. See Bahamonde Cert. § 5. The Custodian stated that, instead, the records were provided in .pdf format because that is the format maintained by the City. The Custodian contended that, for the City to be able to produce e-mails in .eml format, each employee would have to individually export each e-mail. See Bahamonde Cert. § 6. The Custodian thus contended that, as required by N.J.S.A. 47:1A-5(d), the City disclosed the e-mails in “some other meaningful medium” and the Complainant thus possesses all responsive e-mails, albeit not in the specific format he requested.

The Custodian argued that Paff, 229 N.J. 340, does not apply here because the Complainant did not seek an e-mail log. The Custodian acknowledged that the City would have had an obligation to produce an e-mail log has the Complainant actually requested same. The Custodian argued that the Complainant is instead insisting that the City convert .pdf formatted e-mails into .eml formatted files.

## 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).<sup>5</sup> 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).

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<sup>5</sup> 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 submitted his OPRA request on June 28, 2023. Ms. Gambacorto eventually responded in writing on July 12, 2023, nine (9) business days after receipt of the OPRA request. Following additional interactions between the parties, this complaint ensued. In the SOI, the Custodian certified to the dates the City received the OPRA request and the dates Ms. Gambacorto responded thereto. Based on these facts, the evidence supports a “deemed” denial of access.

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. The GRC will not address the additional timeliness violations because the subject OPRA request is already “deemed” denied as of July 12, 2023.

### **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 provides that:

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium.

[N.J.S.A. 47:1A-5(d).]

In Carter v. Franklin Fire Dist. No. 1 (Somerset), 2019 N.J. Super. Unpub. LEXIS 590 (App. Div. 2019),<sup>6</sup> the complainant appealed the Council’s decision that he was not entitled to the responsive records in their “native electronic format” because, among other reasons, he failed to specify such in his OPRA request. In affirming this portion of the Council’s decision, the Appellate Division noted that it was “fundamentally unfair for [the complainant] to add a previously undescribed format to his requests after the [custodian] had already produced documents in an appropriate electronic format.” Id. at 19. The court noted that the complainant’s clarifying of the requests after disclosure prevented the custodian from addressing them within the “native electronic format” perimeters. See also Rodriguez v. Elizabeth Police Dep’t (Union), GRC Complaint No. 2020-69 (April 2021).

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<sup>6</sup> On appeal from Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-137, *et seq.* (Final Decision dated January 31, 2017).

Moreover, in Wolosky v. Twp. of Sparta, 2012 N.J. Super. Unpub. LEXIS 2717 (App. Div. 2012),<sup>7</sup> the court held that the GRC erred by ordering the Township to provide the complainant with the requested audio recording in a specific WAV format. In said complaint, the Township did not maintain the audio recording in WAV format and instead offered to provide the complainant with a free download of the software needed to play the audio recording in the FTR Gold System format. The court specifically held that:

Although the Custodian did not offer to provide Wolosky the recordings in the medium he requested, the Custodian nevertheless offered to provide him with the requested information in a ‘meaningful medium.’ The offered download of the software needed to play audio recordings in the [FTR] Gold System format was ‘meaningful’ because it afforded Wolosky *full access to the requested information*.

[Id. at 8 (emphasis added).]

Here, the Complainant’s original OPRA request sought access to e-mails but did not identify a specific medium or format. It was not until after the first disclosure on July 28, 2023, that the Complainant raised the format issue and invoked Paff, 229 N.J. 340, in support of his contention. It should be noted that, thereafter, the City disclosed multiple additional documents over several e-mails between August 8, 2023, and August 21, 2023. The Complainant subsequently filed this complaint arguing that the Custodian unlawfully denied him access to the records sought, and failed to provide a specific lawful basis for the denial. In the SOI, the Custodian certified that the City only maintained e-mails in .pdf format and that providing .eml files would require creating a record. The Custodian thus argued that the City followed N.J.S.A. 47:1A-5(d) and did not violate OPRA. The Custodian also argued that Paff did not apply here because the Complainant did not seek an e-mail log.

Upon review and consideration of the facts and applicable case law, the GRC is persuaded that no unlawful denial of access occurred here. First, and like in Carter, the Complainant did not originally identify a specific format in his June 28 2023 OPRA request. Instead, he identified his intent to receive the records in that format after the first disclosure. Thereafter, the City provided additional records over the several e-mails. At that point, the Complainant contested each disclosure as not in the format sought. However, the Custodian and Mr. Bahamonde certified that the e-mails sought were maintained in .pdf format and thus disclosed in “some other meaningful medium.” Further, the Custodian and Mr. Bahamonde have both certified to the extensive technological manipulation necessary to convert e-mails to .eml format.

Further, the Complainant has not provided any argument as to why the .pdf e-mails did not represent “some other meaningful medium” to him or that information was missing from the .pdf formatted e-mails. Instead, he simply contended that the Custodian was required to provide them in the after-the-fact identified format. Also, and as instructively noted in Wolosky, there is no evidence in the record to suggest that the .pdf disclosure here did not provide the Complainant “full access to the requested information.”

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<sup>7</sup> On appeal from Wolosky v. Twp. of Sparta, GRC Complaint No. 2008-277 (November 2011).

Of additional note, the GRC will not address the Complainant's assertion that Paff required the Custodian to disclose the e-mails with "e-mail logs intact." The Complainant did not specifically seek an e-mail log; thus, Paff is not dispositive here.

Accordingly, the Custodian did not unlawfully deny access to the requested e-mails because she, through Ms. Gambacorto, disclosed them in the format maintained by the City and that represented "some other meaningful medium." N.J.S.A. 47:1A-5(d); N.J.S.A. 47:1A-6; Carter, 2019 N.J. Super. Unpub. LEXIS 590. Further, there is no evidence in the record to support that the Complainant was denied access to any information as a result of the disclosure in .pdf format. Woloksy, 2012 N.J. Super. Unpub. LEXIS 2717.

### **Knowing & Willful**

OPRA states that "[a] public official, officer, employee or custodian who knowingly and willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states "[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, the Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Custodian, through Ms. Gambacorto, ultimately disclosed to the Complainant the responsive records over several e-mails between July 28, 2023, and August 21, 2023. Further, the Custodian did not violate OPRA by providing those records in .pdf format. N.J.S.A. 47:1A-5(d). Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.



## **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). The GRC will not address the additional timeliness violations because the subject OPRA request was already "deemed" denied as of July 12, 2023.
2. The Custodian did not unlawfully deny access to the requested e-mails because she, through Ms. Gambacorto, disclosed them in the format maintained by the City and that represented "some other meaningful medium." N.J.S.A. 47:1A-5(d); N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), 2019 N.J. Super. Unpub. LEXIS 590 (App. Div. 2019). Further, there is no evidence in the record to support that the Complainant was denied access to any information as a result of the disclosure in .pdf format. Wolosky v. Twp. of Sparta, 2012 N.J. Super. Unpub. LEXIS 2717 (App. Div. 2012).
3. The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Custodian, through Ms. Gambacorto, ultimately disclosed to the Complainant the responsive records over several e-mails between July 28, 2023, and August 21, 2023. Further, the Custodian did not violate OPRA by providing those records in .pdf format. N.J.S.A. 47:1A-5(d). Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Executive Director

July 22, 2025