



State of New Jersey

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

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

David Weiner
Complainant

Complaint No. 2023-219

v.

County of Essex
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 the Custodian has borne his 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 the OPRA request 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**

**David Weiner¹
Complainant**

GRC Complaint No. 2023-219

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. “Document(s) delineating the names and titles” all Division of Family Assistance and Benefits (“DFAB”) employees currently “loaned” to other divisions of the Department of Citizen Services (“DCS”) and the department to which they are loaned.
2. “Document(s) delineating the above referenced employees of DFAB” currently “loaned” to other divisions of DCS and the function they are purportedly fulfilling therefor.
3. “Document(s) delineating the names and titles” of County of Essex (“County”) employees from other divisions of DCS currently “loaned” to DFAB and the department to which they have been loaned.

Custodian of Record: George Seylaz

Request Received by Custodian: August 21, 2023

Response Made by Custodian: August 29, 2023

GRC Complaint Received: September 12, 2023

Background³

Request and Response:

On August 21, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 29, 2023, the Custodian responded in writing obtaining an extension of time through September 6, 2023, due to employee absences within the County. On September 12, 2023, the Custodian responded in writing denying the subject OPRA request because DFAB indicated that no responsive records existed.⁴

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.

⁴ The Custodian’s failure to respond in the extended time frame results in a “deemed” denial of access. N.J.S.A. 47:1A-5(i)(1); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). However, the GRC will not address this issue because the Complainant did not raise it.

Denial of Access Complaint:

On September 12, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant appeared to dispute the Custodian’s denial but did not include additional statements or arguments identifying the reasons for his dispute.

Statement of Information:⁵

On February 9, 2024, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 21, 2023. The Custodian certified that his search included contacting Mr. Fusco at DFAB to search for responsive records. The Custodian certified that following an extension of time, he responded in writing on September 12, 2023, denying the OPRA request on the basis that no records exist.

The Custodian included a discussion of events occurring in mediation and a mediation communication as part of the SOI.⁶

Analysis

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 the Custodian addressed discussions and actions, with accompanying communications, occurring while this complaint was in mediation. The Uniform Mediation Act prohibits the use of mediation communications in administrative proceedings unless all parties waive the privilege, which has not occurred here. N.J.S.A. 2A:23C-4. For this reason, the GRC cannot consider parts of the SOI and must instead address the complaint on its original merits and the limited attestations contained therein that do not address mediation communications.

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 sought “[d]ocuments delineating” information about employees loaned from and to DFAB. The Custodian responded

⁵ On October 2, 2023, this complaint was referred to mediation. On February 5, 2024, this complaint was referred back to the GRC for adjudication.

⁶ The GRC notes that pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications that occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative, or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

stating that DFAB confirmed that no responsive records existed. Following the filing of this complaint, the Custodian certified in the SOI that an additional search yielded no responsive records. Upon review, the GRC is persuaded that no unlawful denial of access has occurred, because the evidence of record is clear that none exist as in Pusterhofer, GRC 2005-49. The County stated that no records existed, and the Custodian certified to this response. Further, there is no evidence in the record to refute this certification.⁷ Thus, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, the Custodian has borne his 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 the OPRA request 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 the Custodian has borne his 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 the OPRA request 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

⁷ The GRC notes that the Complainant's request is invalid on its face because it seeks generic "documents delineating" related to employees on loan that would require research of the County's records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). See also Weiner v. Cnty. of Essex, GRC Complaint No. 2022-213 (October 2023) (holding that the request item seeking "documents delineating" was invalid because it required research).