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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

### June 24, 2025 Government Records Council Meeting

David Weiner  
Complainant

Complaint No. 2023-220

v.

County of Essex  
Custodian of Record

At the June 24, 2025, public meeting, the Government Records Council (“Council”) considered the June 17, 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 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 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 24<sup>th</sup> Day of June 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: June 26, 2025**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 24, 2025 Council Meeting**

**David Weiner<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-220**

**v.**

**County of Essex<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of the following related to “non-supervisory employees”:

1. “Document(s) delineating” policies and procedures of the County of Essex (“County”) “denoting how many employees within the same unit, within the same title, are allowed to vacation at the same time.”
2. Document(s) delineating” the policies and procedures of the Division of Family Assistance and Benefits (“DFAB”) “denoting how many employees within the same unit, within the same title, are allowed to vacation at the same time.”

**Custodian of Record:** David Seylaz

**Request Received by Custodian:** August 21, 2023

**Response Made by Custodian:** August 29, 2023

**GRC Complaint Received:** September 12, 2023

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

**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 extending the response time frame through September 6, 2023. On September 12, 2023, the Custodian responded in writing denying the subject OPRA request on the basis that DFAB advised that no records exist.<sup>4</sup>

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

<sup>2</sup> No legal representation listed on record.

<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> 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 response that no records existed but did not include any arguments to support his position. The Complainant instead noted that he received a response that “no documents have been provided,” noted “[p]lease see attached” on the “Detail Summary” page, and reiterated the Custodian’s denial on the “Records Denied List” page.

### Statement of Information:<sup>5</sup>

On April 12, 2024, the Custodian filed a Statement of Information (“SOI”) attaching a legal certification from DFAB employee Al Fusco. The Custodian certified that he received the Complainant’s OPRA request on August 21, 2023. The Custodian affirmed that he sent the OPRA request to DFAB and was contacted by Mr. Fusco on August 29, 2023, seeking an extension of time. The Custodian affirmed that he e-mailed the Complainant on the same day extending the response time frame through September 6, 2023. The Custodian averred that on September 12, 2023, he reached out to Mr. Fusco for an update and was advised that no records existed. The Custodian certified that he responded in writing to the Complainant on the same day denying the request because no records existed.

The Custodian argued that the Council has consistently held that no unlawful denial of access could have occurred where a custodian certifies that all responsive records that existed were provided to a complainant pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005) and Owens v. Mt. Holly Twp. (Burlington), GRC Complaint No. 2013-233 (February 2014). The Custodian argued that DFAB does not maintain any responsive records. See Fusco Cert. ¶ 4. The Custodian thus requested that the Council find that no unlawful denial of access occurred here.

## 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.

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]ocument(s) delineating” policies and procedures of the County and DFAB “denoting how many employees within the same unit, within the same title, are allowed to vacation at the same

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<sup>5</sup> On October 2, 2023, this complaint was referred to mediation. On March 28, 2024, this complaint was referred back to the GRC for adjudication.

time.” The Custodian responded stating that DFAB confirmed that no responsive records existed. Following the filing of this complaint, the Custodian certified in the SOI that no records existed. The Custodian also included a legal certification from Mr. Fusco to further support this position. 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 and Mr. Fusco certified to this response. Further, there is no evidence in the record to refute this certification.<sup>6</sup> Thus, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, 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 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 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 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

June 17, 2025

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<sup>6</sup> The GRC notes that the Complainant’s request is invalid on its face because it seeks generic “document(s) 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).