



## 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

#### May 20, 2025 Government Records Council Meeting

Ryan Lawrence Johnson  
Complainant

Complaint No. 2023-251

v.

Borough of Sussex (Sussex)  
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council (“Council”) considered the May 13, 2025, Supplemental 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 Custodian’s Counsel has failed to establish in his request for reconsideration of the Council’s April 29, 2025 Final Decision that either 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. Counsel failed to establish that the complaint should be reconsidered based on a “mistake.” Counsel has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Custodian, and not the GRC, had an obligation to sufficiently bear her burden of proof that her response was timely. However, she failed to do so as part of the Statement of Information. Thus, Counsel’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). However, the GRC should note that had the Custodian provided a sufficient argument regarding the holiday in the Statement of Information, the GRC would have recommended that the Council find that no “deemed” denial of access occurred.

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 20<sup>th</sup> Day of May 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: May 27, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***

**Supplemental Findings and Recommendations of the Executive Director  
May 20, 2025 Council Meeting**

**Ryan Lawrence Johnson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-251**

**v.**

**Borough of Sussex (Sussex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of:

1. “[H]andwritten, printed, typed, audio, and/or video files . . . reports, complaints, inspections, penalties, and/or fines” related to Borough of Sussex (“Borough”) code enforcement issues at a specific address on or after August 22, 2023.
2. Reports and complaints filed by Borough residents to which the Borough “did not respond during the time period beginning at the time of each respective report/complaint and ending [thirty (30) days] thereafter.”
3. Reports and/or complaints filed by the Complainant dated August 22, 2023, “precisely as viewed, download, printed, or saved” from e-mail accounts for Code Enforcement Officer George Hutnick and/or the Custodian.

**Custodian of Record:** Antionette Smith

**Request Received by Custodian:** October 2, 2023

**Response Made by Custodian:** October 12, 2023

**GRC Complaint Received:** October 16, 2023

**Background**

**April 29, 2025 Council Meeting:**

At its April 29, 2025 public meeting, the Council considered the April 15, 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, found 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

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<sup>1</sup> legal representation listed on record.

<sup>2</sup> Represented by Frank J. McGovern, Esq., of McGovern & Roseman, P.A. (Newton, NJ).

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 October 31, 2007).

2. The Custodian’s October 12, 2023, response to the Complainant’s OPRA request was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the GRC declines to order any further action because the Custodian disclosed the only responsive record that existed at the time of her response.

### Procedural History:

On May 5, 2025, the Council distributed its Final Decision to all parties. On the same day, Custodian’s Counsel filed a request for reconsideration of the Council’s Final Decision based on a “mistake.” Counsel asserted that the Council erred by miscalculating the response time frame. Counsel argued that between there is no dispute that the Custodian received the OPRA request on October 2, 2023, and responded in writing on October 12, 2023; however, the Borough was closed for Columbus Day<sup>3</sup> during that time frame. Counsel thus argued that the Council’s conclusion No. 1 should be changed to reflect that no “deemed” denial occurred.

Later on May 5, 2025, the Complainant submitted objections to the request for reconsideration. Therein, the Complainant contended that even if the request for reconsideration could prevail on the timeliness issue, the Custodian’s response was ultimately insufficient per the Council’s conclusion No. 2. The Complainant thus argued that there was no valid response within the statutory time frame. The Complainant thus contended that because the request for reconsideration was “merely declaratory in nature,” it should be denied.

### Analysis

#### Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, Custodian’s Counsel filed a request for reconsideration of the Council’s April 29, 2025 Final Decision on the same day as the issuance of the Council’s Order.

Applicable case law holds that:

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<sup>3</sup> Custodian’s Counsel did not identify the date on which Columbus Day was observed.

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, supra, 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

Here, Counsel has contended that the Council made a “mistake” in finding that a “deemed” denial of access occurred because it did not consider that Columbus Day fell between October 2, and October 12, 2023. The Complainant submitted an objection arguing that regardless of the presence of a holiday, the Custodian’s insufficient response meant that no valid response was issued within the statutory response time frame.

The Council should decline to reconsider its April 29, 2025 Final Decision based on a “mistake.” Specifically, the Complainant contended in the Denial of Access Complaint that the Custodian’s response was untimely. In the SOI, the Custodian only asserted that her response was on the seventh (7<sup>th</sup>) business day. However, even with notice of the alleged “deemed” denial, the Custodian did not substantiate this argument by identifying the presence of a holiday within the time frame between her receipt of, and response to, the subject OPRA request. Even upon reconsideration, Custodian’s Counsel mentions the presence of the holiday, but no actual date.<sup>4</sup> This omission and ensuing assertion that the Council made a “mistake” appears to be an attempt to shift the burden of refuting a “deemed” denial claim to the GRC. However, upon the filing of a complaint, the burden of proof does not shift to the GRC to refute a timeliness allegation.

Simply put: a custodian’s “mistake” by omission does not constitute a sufficient reason to grant reconsideration based thereon; a successful reconsideration requires a party to argue the Council made a mistake. No such argument can be made here; the Council’s decision was based on the evidence and arguments before it, which did not include any indication of why the Custodian believed she responded in a timely manner.

As the moving party, Custodian’s Counsel was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. Counsel failed to establish that the complaint should be reconsidered based on a “mistake.” Counsel has also failed to show that the

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<sup>4</sup> The GRC has confirmed that Columbus Day was observed on October 9, 2023.

Council acted arbitrarily, capriciously or unreasonably. See D'Atria, 242 N.J. Super. at 401. Specifically, the Custodian, and not the GRC, had an obligation to sufficiently bear her burden of proof that her response was timely. However, she failed to do so as part of the SOI. Thus, Counsel's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6. However, the GRC should note that had the Custodian provided a sufficient argument regarding the holiday in the SOI, the GRC would have recommended that the Council find that no "deemed" denial of access occurred.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that Custodian's Counsel has failed to establish in his request for reconsideration of the Council's April 29, 2025 Final Decision that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. Counsel failed to establish that the complaint should be reconsidered based on a "mistake." Counsel has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Custodian, and not the GRC, had an obligation to sufficiently bear her burden of proof that her response was timely. However, she failed to do so as part of the Statement of Information. Thus, Counsel's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). However, the GRC should note that had the Custodian provided a sufficient argument regarding the holiday in the Statement of Information, the GRC would have recommended that the Council find that no "deemed" denial of access occurred.

Prepared By: Frank F. Caruso  
Executive Director

May 13, 2025



PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
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JACQUELYN A. SUÁREZ  
*Commissioner*

## FINAL DECISION

### April 29, 2025 Government Records Council Meeting

Ryan Lawrence Johnson  
Complainant

GRC Complaint No. 2023-251

v.

Borough of Sussex (Sussex)  
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 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 October 31, 2007).
2. The Custodian’s October 12, 2023, response to the Complainant’s OPRA request was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the GRC declines to order any further action because the Custodian disclosed the only responsive record that existed at the time of her response.

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 April 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: May 5, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 29, 2025 Council Meeting**

**Ryan Lawrence Johnson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-251**

**v.**

**Borough of Sussex (Sussex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of:

1. “[H]andwritten, printed, typed, audio, and/or video files. . . reports, complaints, inspections, penalties, and/or fines” related to Borough of Sussex (“Borough”) code enforcement issues at a specific address on or after August 22, 2023.
2. Reports and complaints filed by Borough residents to which the Borough “did not respond during the time period beginning at the time of each respective report/complaint and ending [thirty (30) days] thereafter.”
3. Reports and/or complaints filed by the Complainant dated August 22, 2023 “precisely as viewed, download, printed, or saved” from e-mail accounts for Code Enforcement Officer George Hutnick and/or the Custodian.

**Custodian of Record:** Antionette Smith

**Request Received by Custodian:** October 2, 2023

**Response Made by Custodian:** October 12, 2023

**GRC Complaint Received:** October 16, 2023

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

**Request and Response:**

On October 2, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 12, 2023, the eighth (8<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing stating “please see attached in response to your OPRA request[,]” and disclosing an August 22, 2023 e-mail sent by the Complainant to the Borough regarding the identified property.

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<sup>1</sup> legal representation listed on record.

<sup>2</sup> Represented by Frank J. McGovern, Esq., of McGovern & Roseman, P.A. (Newton, 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.

### Denial of Access Complaint:

On October 16, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to timely respond to his OPRA request as required by N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). The Complainant thus argued that his request was “deemed” denied pursuant to Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

The Complainant also contended that the Custodian’s response was insufficient for two (2) reasons. The Complainant argued first that the Custodian failed to respond to each individual request item, as required per Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). The Complainant argued second that the Custodian failed to definitely state whether responsive records existed per Herron v. N.J. Dep’t of Educ., GRC Complaint No. 2011-56 (April 2012).

### Statement of Information:<sup>4</sup>

On February 21, 2024, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that she received the Complainant’s OPRA request on October 2, 2023. The Custodian certified that her search included reviewing Borough e-mail accounts and records maintained electronically and in hard copy. The Custodian affirmed that she also contacted Mr. Hutnick about the subject OPRA request. The Custodian certified that she responded in writing on October 12, 2023, disclosing one (1) e-mail responsive to the subject OPRA request.

The Custodian argued that no unlawful denial occurred because she disclosed to the Complainant the only record responsive to the subject OPRA request. The Complainant disputed the Complainant’s contention that her response was insufficient because it failed to address each OPRA request item. The Custodian noted that the disclosed record was responsive to all three (3) OPRA request items. The Custodian averred that the e-mail was responsive to OPRA request item No. 1 because it was an e-mail and photograph regarding the property and within the timeframe the Complainant identified in his request. The Custodian averred that the e-mail was responsive to OPRA request item No. 2 because the Borough did not respond to the disclosed e-mail within the time frame identified by the Complainant. The Custodian averred that the e-mail was responsive to OPRA request item No. 3 because it was “precisely” as saved in the Borough’s e-mail system.

The Custodian argued that instead of contacting her, the Complainant filed this complaint a day after she responded to the subject OPRA request. The Custodian asserted that had he contacted her first, she could have amended her response to address his concerns. The Custodian contended that, nonetheless, the disclosed e-mail, which the Complainant already had in his possession, was responsive to the entirety of the OPRA request.

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<sup>4</sup> On November 6, 2023, this complaint was referred to mediation. On January 29, 2024, this complaint was referred back to the GRC for adjudication.

## 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, GRC 2007-11.

Here, the Complainant contended, in part, that the Custodian failed to respond to the subject OPRA request within the statutorily mandated time frame. In the SOI, the Custodian certified that she received the Complainant's OPRA request on October 2, 2023. The Custodian further certified that she responded in writing on October 12, 2023, the eighth (8<sup>th</sup>) business day after receipt of the subject OPRA request, disclosing a single e-mail. Thus, the evidence of record supports that the Custodian's response exceeded the statutorily mandated seven (7) business day response time frame by one (1) day. Further, the Custodian provided no evidence or arguments to assert that the GRC's calculation is incorrect.

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.

### Sufficiency of Response

OPRA provides that if a "custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor . . . on the request form and promptly return it to the requestor.*" N.J.S.A. 47:1A-5(g) (emphasis added). In Paff, GRC 2007-272, the Council held that "[t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g)." See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Here, the Custodian responded in writing on October 12, 2023, disclosing a responsive e-mail to the Complainant without any further explanation. In the Denial of Access Complaint, the Complainant alleged that the Custodian's response was insufficient because she failed to address

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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.

each OPRA request item. In the SOI, the Custodian argued, with a detailed explanation, that the disclosed e-mail was responsive to each of the three (3) OPRA request items. However, the Custodian also rebuked the Complainant for not contacting her to express his concern over her response.

Upon review, the facts here are on point with those in Paff; thus, it follows there was an insufficient response in the instant complaint. The Custodian had an obligation to address each OPRA request item individually pursuant to longstanding case law and failed to do so. This failure resulted in the Complainant's confusion over whether the Custodian responded completely to the OPRA request. Further, contrary to the Custodian's assertion, the Complainant was not required to contact her to address his concerns in advance of filing this Complaint.

Therefore, the Custodian's October 12, 2023, response to the Complainant's OPRA request was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-272. However, the GRC declines to order any further action because the Custodian disclosed the only responsive record that existed at the time of her response.

### **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 October 31, 2007).
2. The Custodian's October 12, 2023, response to the Complainant's OPRA request was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the GRC declines to order any further action because the Custodian disclosed the only responsive record that existed at the time of her response.

Prepared By: Frank F. Caruso  
Executive Director

April 15, 2025