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DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

June 24, 2025 Government Records Council Meeting

Troy White
Complainant

Complaint No. 2023-261

v.

Somerset County Jail
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 this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond had expired and immediate access records are not at issue. See Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009).

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 24th 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**

**Troy White¹
Complainant**

GRC Complaint No. 2023-261

v.

**Somerset County Jail²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail:

1. Search warrant or affidavit to obtain the Complainant's "shorts" while incarcerated at Somerset County Jail ("Jail").
2. Property receipt for the Complainant's "shorts" turned over to the Somerset County Prosecutor's Office ("SCPO") "or anyone else."
3. "The name and date of all persons involved" in turning his property over.
4. The Complainant's inmate property inventory sheet.

Custodian of Record: Kelly L. Mager

Request Received by Custodian: October 12, 2023

Response Made by Custodian: October 18, 2023; October 23, 2023

GRC Complaint Received: October 30, 2023

Background³

Request and Response:

On October 11, 2023, the Complainant submitted an Open Public Records Act ("OPRA") request allegedly to the Jail on a model OPRA request form. On October 18, 2023, Assistant Prosecutor Lauren R. Casale of SCPO responded in writing denying access to OPRA request item No. 1 under N.J. Court Rules, R. 1:38-3(c)(10), 3:5-4, and 3:5-6(c). Ms. Casale further denied access to OPRA request item Nos. 2 and 4 because no records existed. Ms. Casale finally denied access to OPRA request item No. 3 as invalid because it sought information and not specific government records.

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary, Giacobbe, Alfieri, Jacobs, LLC (Oakland, NJ).

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.

On October 23, 2023, the Custodian responded in writing stating that SCOP already responded to OPRA request item Nos. 1 and 2. The Custodian denied access to OPRA request item No. 3 because the Jail did not possess responsive records. The Custodian finally responded to OPRA request item No. 4 by disclosing to the Complainant a property inventory sheet.

Denial of Access Complaint:

On October 30, 2023, the Complainant filed a Denial of Access Complaint⁴ with the Government Records Council (“GRC”). The Complainant asserted that his OPRA request was denied because the Jail “sent the [OPRA request] to the wrong custodian of records.”

Statement of Information:

On December 18, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 12, 2023. The Custodian certified that SCPO conducted a search of both physical and digital files for records responsive to the Complainant’s OPRA request item Nos. 2 and 4 and confirmed it maintained no responsive records. The Custodian affirmed that, separately, Chief Frank J. Apisa from the Jail performed a search of multiple files related to the Complainant. The Custodian affirmed that he located an inmate property sheet and no other responsive records.

The Custodian certified that Ms. Casale responded in writing on October 18, 2023, denying the request for various reasons. The Custodian further certified that she subsequently responded in writing on October 23, 2023, referring to Ms. Casale’s response for OPRA request item Nos. 1 and 2, that no records exist for item No. 3, and disclosing a responsive property sheet for item No. 4.

The Custodian argued that the Complainant’s OPRA request item No. 1 seeks records that are clearly exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9(b) and the applicable court rules cited by Ms. Casale. The Custodian noted that SCPO did not conduct a search for records because they would have been exempt; however, the Jail conducted a search and did not locate any responsive records. The Custodian contended that, in accordance with Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38 (App. Div. 2005) and Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), she did not unlawfully deny access to this item because the requested records were not in the Jail’s possession and did not exist.

The Custodian averred that no records responsive to the Complainant’s OPRA request item No. 2 existed. The Custodian further certified that although SCPO did not identify any records responsive to OPRA request item No. 4, the Jail did identify a responsive property sheet, which she disclosed to the Complainant on October 23, 2023.

The Custodian argued that the Complainant’s OPRA request item No. 3 was invalid because it failed to identify a specific government record, as required in Bent, 381 N.J. Super. at 38. The Custodian noted that, notwithstanding the validity issue, the Jail performed a search and was unable to locate any responsive records.

⁴ The Complainant verified his Denial of Access Complaint on October 23, 2023.

Analysis

Unripe Cause of Action

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 is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, Docket No. A-2122-05T2 (App. Div.), certif. denied, 193 N.J. 292 (2007).⁵ In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian’s denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian’s cited basis for denial was lawful. The court held that:

The GRC has an independent obligation to ‘render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA The GRC is not limited to assessing the correctness of the reasons given for the custodian’s initial determination; it is charged with determining if the initial decision was correct.

[Id.]

The court further stated that:

Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (lower court decision may be affirmed for reasons other than those given below) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), aff’d, 24 N.J. 139 (1957).

[Id.]

⁵ On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

In Sallie v. N.J. Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009), the complainant forwarded a complaint to the GRC asserting that he had not received a response from the custodian and by the time the GRC received his complaint seven business days would have passed. The Council held that “the Complainant’s cause of action was not ripe at the time he verified his Denial of Access Complaint.” The Council reasoned that because the complainant filed the complaint before the statutorily mandated seven business day period had expired, the custodian had not yet denied the complainant access to a government record. As such, the Council dismissed the complaint.

Here, the Complainant submitted a four (4) item OPRA request on the GRC’s model OPRA request form seeking records related to the Jail’s confiscation of his “shorts.” On October 18, 2023, Ms. Casale responded in writing denying the OPRA request on multiple bases. On October 23, 2023, the Complainant verified his complaint and sent same to the GRC, arguing that the Custodian sent his request to “the wrong custodian” via U.S. mail. On the same day, the Custodian responded in writing denying his request in part and disclosing a record responsive to OPRA request item No. 4. The GRC received the instant complaint on October 30, 2023.

N.J.S.A. 47:1A-6 provides that “[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian’s decision by filing . . . a complaint with the [GRC]” For such a complaint to be ripe, however, the complainant must have been denied access to a government record.

The chronology of events in this complaint presents a novel factual record; however, the GRC is persuaded that the record supports that this complaint is unripe. First, the Complainant composed his OPRA request using the GRC’s model OPRA request form. That form is a template that does not include any custodial contact information, logos, *etc.* that an agency can rely on to externally reroute or internally route an OPRA request. Moreover, the Complainant did not identify the specific agency to or subdivision to whom he was submitting his OPRA request. It should also be noted that a date stamp on the OPRA request included in the SOI shows that SCPO directly received the OPRA request on October 12, 2023. After receiving Ms. Casale’s response, the Complainant verified his complaint directly against the Jail (and not SCPO) on October 23, 2023, the seventh (7th) business day of the statutorily mandated time frame, arguing that it was sent to “the wrong custodian.”

However, the Complainant never gave the actual Custodian a chance to respond to his OPRA request within the statutory response time frame prior to filing this complaint, which she in fact did on the same day as verification thereof. Thus, the Complainant here acted in a similar manner as the complainants in Sallie, GRC 2007-226 by filing a Denial of Access Complaint with the GRC prior to expiration of the valid time period for the Custodian to respond. More specifically, the Complainant objected to Ms. Casale as the “wrong custodian” before the Custodian’s statutory time frame expired. As such, the complaint is not ripe for adjudication.

For sake of completeness, the GRC notes that the Complainant’s “wrong custodian” assertion is belied by the lack of contact indicators on his OPRA request submission. Further, the Custodian certified in the SOI that the SCPO and Jail both performed a search for responsive

records. While the dual response appears to be the result of an internal OPRA response oddity, the evidence of record renders the “wrong custodian” allegation erroneous.

Accordingly, this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond had expired and immediate access records are not at issue. See Sallie, GRC 2007-226.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond had expired and immediate access records are not at issue. See Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009).

Prepared By: Frank F. Caruso
Executive Director

June 17, 2025