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DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

October 6, 2025 Government Records Council Meeting

Christopher Reier
Complainant

Complaint No. 2023-279

v.

Franklin Fire District No. 1 (Somerset)
Custodian of Record

At the October 6, 2025, public meeting, the Government Records Council (“Council”) considered the September 29, 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 his burden of proof that he 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).
2. The responsive report is exempt from disclosure under OPRA because it relates to employee grievances and has the indicia of a personnel record. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; N. Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Sciara v. Borough of Woodcliff Lake (Bergen), GRC Complaint No. 2011-32 (August 2012). Thus, the Custodian lawfully denied access to the report. N.J.S.A. 47:1A-6.

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 6th Day of October 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: October 7, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 6, 2025 Council Meeting**

**Christopher Reier¹
Complainant**

GRC Complaint No. 2023-279

v.

**Franklin Fire District No. 1 (Somerset)²
Custodial Agency**

Records Relevant to Complaint: Copy of “the final report” to which the Complainant advised he was entitled.

Custodian of Record: Patrick Shimalla

Request Received by Custodian: October 18, 2023

Response Made by Custodian: October 28, 2023

GRC Complaint Received: November 8, 2023

Background³

Request and Response:

On October 18, 2023, the Complainant submitted a “duo information” and Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant noted he was “advised legally” that he was entitled to a “brief overview of” the report’s conclusions because they relate to him. On October 28, 2023, Ms. Dawn Cuddy responded in writing on behalf of the Custodian stating that she was disclosing the responsive report with redactions and a document index citing to the attorney-client privilege exemption (N.J.S.A. 47:1A-1.1), personnel exemptions (N.J.S.A. 47:1A-1.1, 10), and Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”).

Denial of Access Complaint:

On November 8, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that, over the last several months, Franklin Fire District No. 1 (“District”) conducted an investigation concerning him that could impact his career. The Complainant stated that, after learning that a report had been finalized,

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.

he requested a copy of it. The Complainant maintained he was “advised legally” that he was entitled to a “brief overview of” the report’s conclusions because they relate to him. The Complainant stated that, as of October 27, 2023, he did not receive any communication from the District.

The Complainant stated that on Saturday, October 28, 2023, he received a redacted copy of the report. The Complainant argued that he believed that the Custodian was required to disclose an unredacted copy of the report to him. The Complainant included a copy of the redacted report as part of his complaint.

Statement of Information:

On December 1, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 18, 2023. The Custodian certified that he forwarded the OPRA request to the District’s attorney because he “knew it dealt with personnel records and an investigation” into District personnel issues. The Custodian affirmed that the attorney advised him that although the report was exempt from disclosure under OPRA it could be disclosed to the Complainant with redactions for anything not pertaining to him under the common law right of access. The Custodian certified that Ms. Cuddy responded in writing on his behalf on October 28, 2023, disclosing the report with redactions and a document index.

The Custodian averred that the report in question addressed a harassment investigation based on allegations made by and against District personnel. The Custodian contended that the OPRA request could have been denied in its entirety because the report sought is exempt from disclosure under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-10, and EO 26. The Custodian asserted that, notwithstanding the exempt nature of the report, the District “went above and beyond” by providing a redacted copy under the common law. The Custodian further argued that New Jersey Superior Court already addressed this exact issue in Colicelli v. Twp. of Neptune, et al., Docket No. MON-L-3597-20 (holding that a party in interest could obtain an investigation report under the common law and not OPRA).

The Custodian finally argued that his actions were not knowing and willful in nature because he consulted with the District’s attorney and ultimately provided the Complainant an exempt record with redactions.

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).⁴ 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).

Here, the Complainant submitted his OPRA request to the Custodian via e-mail on October 18, 2023. Thus, the final business day to respond was Friday, October 27, 2023. On Saturday, October 28, 2023, Ms. Cuddy responded disclosing the report with redactions. In his complaint, the Complainant noted that he had not received any communication from the District by October 27, 2023, but acknowledged that he received Ms. Cuddy's disclosure e-mail on October 28, 2023. In the SOI, the Custodian certified to the above dates being accurate. Based on this, the evidence of record supports that the Custodian failed to respond in the statutory time frame, which expired on October 27, 2023.

Therefore, the Custodian did not bear his burden of proof that he 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.

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 government record shall not include . . . information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer [or] with any grievance filed by or against an individual

[N.J.S.A. 47:1A-1.1.]

In Yannone v. N.J. Dep't of Corr., GRC Complaint No. 2016-73 (October 2017), the complainant sought a recorded interview of an inmate pertaining to allegations of misconduct against a DOC employee. The Custodian denied access under the grievance exemption. The GRC found that because the recorded interview was borne from allegations of misconduct by an inmate

⁴ 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.

against an employee, the record was exempt from disclosure under OPRA. The GRC also noted that DOC certified that the record pertained to a grievance filing. See also Melendez v. N.J. Dep’t of Corr., GRC Complaint No. 2020-210 (May 2022) (holding that a responsive record was exempt under the grievance exemption).

Moreover, OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 594 (2011). Further, the personnel records exemption may apply to records that “bear many of the indicia of personnel files.” N. Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009).

The Council has addressed whether personnel records not specifically identified in OPRA as disclosable were subject to disclosure. In doing so, the Council has determined that records involving employee discipline or investigations into employee misconduct are properly classified as personnel records exempt from disclosure under N.J.S.A. 47:1A-10. For instance, in Sciara v. Borough of Woodcliff Lake (Bergen), GRC Complaint No. 2011-32 (August 2012), the Council first determined that the “D’Amato Report” at issue was a personnel record, regardless of the complainant’s assertion that the record was not part of her personnel record. The Council next held that the custodian lawfully denied access to the record under the personnel exemption and because the complainant did not knowingly waive the right confidentiality afforded to individuals when requesting their own personnel records. N.J.S.A. 47:1A-10; McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007-305 (March 2011).

Here, the Complainant alleged he had a legal right to a “brief overview” of the requested report because the report involved him. The District disclosed the report to the Complainant with redactions, citing N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10. The Complainant, unsatisfied with a copy of the redacted report, filed this complaint arguing that he was entitled to the report without redactions because it involved him. The Complainant also attached a copy of the redacted report he received from the District. In the SOI, the Custodian argued that, although the report was exempt from disclosure under OPRA, he nevertheless disclosed same with redactions under the common law.

Typically, where a custodian denies access to a record and the GRC is unable to determine the applicability of the asserted exemption it will perform an *in camera* review of said record. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005). However, the GRC can proceed here without the need to perform an *in camera* review because it is able to make a determination based on the redacted record attached to the Denial of Access Complaint.

The report at issue here was composed by an attorney from Cleary, Giacobbe, Alfieri, Jacobs, LLC (“Firm”) and contains the following disclaimer:

Attorney-Client Communication
Attorney-Work Product

**Privileged And Confidential
Advisory, Consultative And Deliberative
Not A Public Record**

While the inclusion of this language does not automatically exempt the record, the report itself includes the following background information: “This firm was tasked with conducting an investigation into multiple complaints made by and against [the Complainant and others].” Further, the report states that its investigation was limited to “whether the alleged conduct had occurred and whether there was a violation of the District’s policies or state and federal law.” The unredacted portions of the report thereafter support its classification as a personnel report addressing an investigation into allegations of workplace harassment and contains findings on issues falling under the District’s workplace violence and harassment policies.

It is obvious from the above that the report directly relates to grievances filed by District personnel against other members. Further, the report clearly has the indicia of a personnel record, like the outside employment requests discussed in N. Jersey Media Grp., 405 N.J. Super. 386. Finally, although the Complainant was one subject of the report, there is no evidence in the record to support that he affirmatively waived the right of confidentiality under N.J.S.A. 47:1A-10. Thus, and similar to the Council’s prevailing case law, the Custodian lawfully denied access to the responsive report.⁵ Further, because the report was exempt based on the above, the GRC does not reach whether additional exemptions are applied thereto.

Accordingly, the responsive report is exempt from disclosure under OPRA because it relates to employee grievances and has the indicia of a personnel record. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; N. Jersey Media Grp., 405 N.J. Super. at 390; Sciara, GRC 2011-32. Thus, the Custodian lawfully denied access to the report. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he 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).
2. The responsive report is exempt from disclosure under OPRA because it relates to employee grievances and has the indicia of a personnel record. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; N. Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Sciara v. Borough of Woodcliff Lake (Bergen), GRC

⁵ The GRC does not differentiate between the redacted and unredacted version of the record based on the District’s argument that same was disclosed with redactions under the common law.

Complaint No. 2011-32 (August 2012). Thus, the Custodian lawfully denied access to the report. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

September 30, 2025