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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

Sandra Reier
Complainant

Complaint No. 2023-282

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’s October 28, 2023 response was insufficient because he failed to address each request item. See N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to address OPRA request item No. 2, as clarified, at the time of his response through Ms. Cuddy.
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.
3. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request item No. 2, as clarified, seeking OPRA requests and e-mails from or about the Public Employee Occupational Safety & Health Act. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA requests 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 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**

**Sandra Reier¹
Complainant**

GRC Complaint No. 2023-282

v.

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

Records Relevant to Complaint: Copies of:

1. "All reports" produced regarding the Middlebush Volunteer Fire Department ("MVFD") Investigation.
2. "[A]nything regarding [the Public Employee Occupational Safety & Health Act ("PEOSHA")] for January 1, 2022 to present."

Custodian of Record: Patrick Shimalla

Request Received by Custodian: October 13, 2023

Response Made by Custodian: October 16, 2023; October 28, 2023

GRC Complaint Received: November 9, 2023

Background³

Request and Response:

On October 13, 2023, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On October 16, 2023, Ms. Dawn Cuddy responded in writing on behalf of the Custodian seeking clarification of OPRA request item No. 2 by asking the Complainant to identify the types of records sought. On the same day, the Complainant responded stating that she was seeking all OPRA requests or e-mails sent and received from PEOSHA or regarding PEOSHA within the identified time frame.

On October 28, 2023, Ms. Cuddy responded in writing on behalf of the Custodian stating that she was disclosing the report responsive to OPRA request item No. 1 with redactions and a document index citing to the attorney-client privilege exemption (N.J.S.A. 47:1A-1.1); personnel

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.

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 9, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that, regarding OPRA request item No. 1, she sought an investigation report pertaining to MVFD paid for by taxpayer money. The Complainant stated that she received a redacted copy of the report but believed she was entitled to an unredacted copy thereof.

The Complainant next asserted that regarding OPRA request item No. 2, she was asked for and provided clarification to Ms. Cuddy on October 16, 2023. The Complainant argued that Franklin Fire District No. 1 (“District”) never addressed this request item again. The Complainant argued that she was attaching attorney bills indicating prior OPRA requests were submitted. The Complainant contended that these requests are “public information,” and that taxpayer money was spent responding thereto.

Statement of Information:

On December 12, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 13, 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 the report was exempt from disclosure under OPRA. The Custodian certified that the attorney further advised that, although the request only cited OPRA, the report could be disclosed to the Complainant with redactions for anything not pertaining to her 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 acknowledged that Ms. Cuddy’s response did not address OPRA request item No. 2.

Regarding OPRA request item No. 1, 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 item 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).

Regarding OPRA request item No. 2, the Custodian certified that the District never sent OPRA requests to or communicated via e-mail with PEOSHA. The Custodian thus certified that, although the Complainant was not advised at the time of Ms. Cuddy’s response, no responsive records exist.

Finally, the Custodian argued that any violations were neither knowing nor willful in nature because he consulted with the District’s attorney and ultimately provided the Complainant an exempt record with redactions.

Analysis

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 v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), 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).

Upon review, the GRC is satisfied that the Custodian provided an insufficient response. Specifically, the Custodian, through Ms. Cuddy, responded to the Complainant’s OPRA request disclosing a redacted report applicable to OPRA request item No. 1. However, the response failed to address OPRA request item No. 2, as clarified by the Complainant on October 16, 2023. This complaint followed, and in the SOI the Custodian acknowledged that Ms. Cuddy’s response did not address OPRA request item No. 2. Thus, the facts here are on point with those in Paff and it follows that there was an insufficient response in the instant complaint.

Therefore, the Custodian’s October 28, 2023 response was insufficient because he failed to address each request item. See N.J.S.A. 47:1A-5(g); Paff, GRC 2007-272; Lenchitz, GRC 2012-265. Specifically, the Custodian failed to address OPRA request item No. 2, as clarified, at the time of his response through Ms. Cuddy.

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 Request Item No. 1

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 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 applies 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. For instance, 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 notwithstanding 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 sought access to an MVFD investigation report. 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. This complaint followed, wherein the Complainant argued that she was entitled to the unredacted report because it involved her. In the SOI, the Custodian argued that although the report was exempt from disclosure in its entirety under OPRA he disclosed same with redactions under the common law. The Custodian attached a copy of the redacted report to the SOI.

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 SOI.

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 provides 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 notes 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 and issuing 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 she affirmatively waived the right confidentiality afforded 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.⁴ Because the report falls under the personnel records exemption, the GRC does not reach whether additional exemptions apply.

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.

OPRA Request Item No. 2

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, OPRA request item No. 2, as clarified, sought all OPRA requests or e-mails sent to or received from PEOSHA, or in regard thereto, from January 1, 2022 to present. Following the Custodian’s insufficient response, the Custodian certified in the SOI that although not communicated to the Complainant, no responsive records existed.

Upon review, the GRC is persuaded that no unlawful denial of access has occurred because the evidence of record supports that no records exist. The Custodian has certified that no records existed, and the Complainant has not provided any evidence to refute this certification.

⁴ 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.

Specifically, the Complainant included in her Denial of Access Complaint attorney bills with entries related to both a non-specific OPRA request and a telephone call to PEOSHA. However, these entries offer no support that PEOSHA filed the referenced OPRA request or that the District and/or its attorney contacted PEOSHA in any manner other than through telephone. 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 item No. 2, as clarified, seeking OPRA requests and e-mails from or about PEOSHA. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to these OPRA requests 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:

1. The Custodian's October 28, 2023 response was insufficient because he failed to address each request item. See N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to address OPRA request item No. 2, as clarified, at the time of his response through Ms. Cuddy.
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.
3. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request item No. 2, as clarified, seeking OPRA requests and e-mails from or about the Public Employee Occupational Safety & Health Act. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA requests 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

September 30, 2025