



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 31, 2026 Government Records Council Meeting

Aakash Dalal
Complainant

Complaint No. 2023-284

v.

Bergen County Prosecutor's Office
Custodian of Record

At the March 31, 2026, public meeting, the Government Records Council (“Council”) considered the March 24, 2026, 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 conducted an insufficient search for the letter responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to contact Mr. Menaker under after the filing of this complaint. However, the GRC declines to order disclosure because the Custodian did so as part of the Statement of Information.
2. Although the Custodian conducted an insufficient search in response to the Complainant’s request, he ultimately provided the Complainant with the responsive correspondence as part of the Statement of Information. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

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 31st Day of March 2026

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: April 2, 2026

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 31, 2026 Council Meeting**

**Aakash Dalal¹
Complainant**

GRC Complaint No. 2023-284

v.

**Bergen County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of “all letter[s], emails, correspondence, or communication from Steven L. Menaker to Bergen County Prosecutor Mark Musella or any other [Bergen County Prosecutor's Office (“BCPO”)] employees during and between January 1, 2023 and present concerning the [Complainant] or any litigation related to the [Complainant] and all responses by BCPO employees to same.”

Custodian of Record: Thomas McGuire

Request Received by Custodian: October 23, 2023

Response Made by Custodian: November 1, 2023

GRC Complaint Received: November 13, 2023

Background³

Request and Response:

On October 19, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 1, 2023, the Custodian responded in writing denying the request because the BCPO “does not possess a public record responsive” to the request and citing Williams v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-297 (May 2015).

Denial of Access Complaint:

On November 13, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records he requested exist based on an attorney bill from Mr. Menaker's law firm sent to the Office of the Bergen

¹ No legal representation listed on record.

² Represented by Craig P. Bossong, Esq., of Florio Perrucci Steinhardt Cappelli & Tipton LLC (Easton, PA).

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.

County Counsel regarding Complainant's lawsuit against Bergen County. The Complainant stated that the bill includes a May 2023 entry indicating Mr. Menaker corresponded with Mr. Musella.

The Complainant asserted that the Custodian "falsified" his response to Complainant's OPRA request. The Complainant requested for the Custodian to be fined and the records to be released to him.

Statement of Information:

On December 13, 2025, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on October 23, 2023. The Custodian certified that, on October 27, 2023, he caused BCPO's Information Technology Department to conduct an electronic search for any records received from "Steven Menaker to the Prosecutor and/or the Office from January 1, 2023, to present regarding [the Complainant]." The Custodian asserted that this search did not yield any responsive documents or e-mails. The Custodian certified that he also had the Prosecutor's Executive Assistant search agency records for responsive records, to which none were found. The Custodian certified that, on November 1, 2023, he responded to the Complainant in writing, denying the Complainant's request because the Custodian was unable to find any responsive records.

The Custodian averred that, once he received the Denial of Access Complaint, he became aware of the attorney bill from Mr. Menaker's law firm related to Mr. Musella. The Custodian certified that the bill was created by "an outside attorney" and regarded a matter to which BCPO was not a party. The Custodian certified that he had counsel contact Mr. Menaker to determine the existence of the May 2023 communication. The Custodian affirmed that "counsel for the former County Sheriff" located the communication and provided him with it. The Custodian certified that said letter was being provided to the Complainant as part of this SOI. The Custodian further certified that this document was not found in the BCPO files and that it is "unknown whether [the letter] was ever received by [Mr. Musella]."

Additional Submissions:

On December 26, 2023, the Complainant submitted a response to the Custodian's SOI. The Complainant argued that Mr. Musella must have received the letter because the bill shows on May 23, 2023, Mr. Menaker had a telephone conversation with the Custodian. The Complainant argued that once he filed the complaint attaching the attorney bill, BCPO had no choice but to disclose the letter they knew existed. The Complainant contended that this disclosure constitutes a knowing and willful violation. The Complainant contended that the letter's content proves that Mr. Menaker sought a favor from Mr. Musella and indeed received it in the form of a discussion with the Custodian on May 23, 2023. The Complainant argued that the Custodian then "falsely" denied the existence of the letter.

The Complainant contended that the forgoing proves both that Mr. Musella and the Custodian knew about the letter and that he "intentionally concealed it" to conceal violations of the Rules of Professional Conduct, including conflicts of interest violations. The Complainant thus

requested that the GRC refer this complaint to the Office of Administrative Law for a hearing to determine whether a knowing and willful violation occurred.

Analysis

Sufficiency of Search

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. Id. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. Id., See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Here, the Custodian denied the Complainant's request and stated that no responsive records exist. However, upon receiving the instant complaint, the Custodian contacted Mr. Menaker directly to ask if he had a copy of the letter he sent to Mr. Musella. Mr. Menaker produced the letter and the Custodian then provided to the Complainant as an attachment to the SOI. The Custodian certified that this letter was not in any BCPO files he searched and that he is unsure whether Mr. Musella ever received this letter.

Upon review, the relevant OPRA request asked for "all letter[s], emails, correspondence, or communication" between Mr. Menaker and Mr. Musella regarding a specific case over a defined period of time. In the SOI, the Custodian certified that electronic searches were conducted, but was decidedly vaguer as to the extent of the Executive Assistant's search. The Custodian also stated that it was not until the complaint that he became aware of the billing entry made "by an outside attorney" and that "counsel for the former Sheriff . . . was able to provide a copy of the correspondence." However, the evidence of record shows that Mr. Menaker was the "outside attorney" for the County and "counsel for the former Sheriff." Therefore, the Custodian's initial search was inadequate because he did not contact Mr. Menaker directly as part of his initial search for responsive correspondence until after this complaint was filed. Schneble, GRC 2007-220.

The Complainant's assertion that the Custodian knew of the letter's existence and falsely asserted it did not exist is noted. However, there is no evidence in the record to support Mr. Menaker's contact with the Custodian, approximately twenty (20) days after the fact, was the direct result of either the letter or the Custodian's knowledge of its existence.

Accordingly, the Custodian conducted an insufficient search for the letter responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to contact Mr. Menaker after the filing of this complaint. However, the GRC declines to order disclosure because the Custodian did so as part of the SOI.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly and willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty.” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states that “[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA].” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, although the Custodian conducted an insufficient search in response to the Complainant’s request, he ultimately provided the Complainant with the responsive correspondence as part of the SOI. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian conducted an insufficient search for the letter responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to contact Mr. Menaker under after the filing of this complaint. However, the GRC declines to order disclosure because the Custodian did so as part of the Statement of Information.
2. Although the Custodian conducted an insufficient search in response to the Complainant’s request, he ultimately provided the Complainant with the responsive correspondence as part of the Statement of Information. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element

of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: Brenda B. Alves
Staff Attorney

March 24, 2026