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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

October 6, 2025 Government Records Council Meeting

Jonathan Stevens
Complainant

Complaint No. 2023-303

v.

NJ State Police
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 portions of the Complainant’s OPRA request not seeking “immediate access” records, based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2015-312 (March 2017). Therefore, the Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
2. The Custodian has borne his burden of proof that he lawfully denied access to the Complainants’ OPRA request seeking “all records” regarding Case No. 1766, an investigation conducted more than twenty (20) years before the submission of the OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records 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**

**Jonathan Stevens¹
Complainant**

GRC Complaint No. 2023-303

v.

**N.J. State Police²
Custodial Agency**

Records Relevant to Complaint: “No-loss copies of all records” related to New Jersey State Police (“NJSP”) case No. 1766 (as identified on an NJSP Forensic Photography Unit (“Unit”) log) “dated on or after” September 12, 2001.

Custodian of Record: Trooper Patrick McManus

Request Received by Custodian: October 22, 2023

Response Made by Custodian: October 31, 2023; November 16, 2023; December 8, 2023; January 18, 2023

GRC Complaint Received: December 12, 2023

Background³

Request and Response:

On October 22, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 31, 2023, the Custodian responded in writing extending the response time frame through November 16, 2023. On November 16, 2023, the Custodian responded in writing stating that while they are working on the subject OPRA request, another extension of the response time frame through December 8, 2023, was necessary.

On November 19, 2023, the Complainant e-mailed the Custodian stating that nearly thirty (30) days had passed since he submitted his OPRA request. The Complainant asked the Custodian to disclose those records located and all responsive records by no later than December 6, 2023. The Complainant further stated “[d]o not ask for more extensions.” On December 8, 2023, the Custodian responded in writing stating that NJSP would need another extension of time through December 29, 2023.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Kevin J. Dronson.

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.

Denial of Access Complaint:

On December 12, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contested the Custodian’s extensions of time but did not provide any additional arguments regarding his issue therewith.

Supplemental Responses:

On January 18, 2024, the Custodian responded in writing stating that, based on the criteria included in the OPRA request, NJSP was unable to locate a responsive record. The Custodian stated that the subject OPRA request was denied because no records exist.

Statement of Information:

On January 18, 2024, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 22, 2023. The Custodian certified that he initially responded extending the response time frame. The Custodian affirmed that his search included discussing the OPRA request with NJSP personnel due to its similarity to a prior OPRA request. The Custodian certified that after reviewing the documented exhaustive searches performed for the prior OPRA request, he determined that no responsive records existed. The Custodian certified that the second (2nd) and third (3rd) extension were necessary due to the search history review and a required two (2) week training following the Thanksgiving holiday. The Custodian certified that, following the Denial of Access Complaint, he responded in writing on January 18, 2024, denying the subject OPRA request on the basis that no records existed.

The Custodian averred that the substance of the subject OPRA request was litigated extensively in both the New Jersey Superior Court Law and Appellate Divisions between 2018 and 2020. The Custodian stated that in Lawyers Comm. For 9/11 Inquiry v. N.J. State Police, 2020 N.J. Super. Unpub. LEXIS 39 (App. Div. 2020), NJSP submitted several certifications describing its evidence storage related to NJSP’s 9/11 investigation and evidencing its attempts to locate photographs identified in the log provided by the Complainant. The Custodian stated that those certifications included extensive details of the multiple physical locations searched, all resulting in a failure to locate responsive photographs. The Custodian stated that the trial court upheld NJSP’s denial and the Appellate Division affirmed. The Custodian attached copies of the relevant certifications to the SOI.

The Custodian initially argued that, per Stop & Shop Supermarket Co., LLC. V. Cnty. of Bergen, 450 N.J. Super. 286 (App. Div. 2017), and Cinque v. N.J. Dep’t of Corr., 261 N.J. Super. 242, 243 (App. Div. 1993), the requested relief could not be granted because no responsive records existed. The Custodian thus argued that the issue was already fully litigated in Lawyers, and this matter must be rendered moot.

The Custodian further argued that he did not unlawfully deny access here because the evidence supports that no records exist. The Custodian noted that while it was unclear what the Complainant meant by “all records,” he was already in possession of the logbook. The Custodian

noted that the Complainant failed to identify any additional records; thus, the OPRA request is a wholesale attempt to obtain all records pertaining to NJSP's involvement in the 9/11 investigation. The Custodian contended that, even if the OPRA request identified specific records, NJSP has already demonstrated in Lawyers that no records exist. The Custodian argued that the same records at issue here were at issue in Lawyers, and he has similarly certified to this fact.

The Custodian finally argued that he did not knowingly and willfully violate OPRA. Rather, he contends he took extensions to fully determine whether the requested records existed. The Custodian asserted that, rather than allow NJSP to complete its search, the Complainant filed this complaint.

Additional Submissions:

On February 1, 2024,⁴ the Complainant submitted a reply to the SOI.⁵ Therein, the Complainant contended that NJSP was attempting to thwart disclosure of records gathered over the past 22 years. The Complainant contended that, based on the logbook he obtained and his reading of the NJSP's "Evidence Field Manual" ("Manual"), there is a strong likelihood that responsive records exist. The Complainant argued that NJSP had a "duty to make and maintain records" because it assigned a case number, documented the Unit's actions of processing film on September 12, 2001, and because the State's retention schedules require permanent retention of photographs and slides. The Complainant argued that "the records" were created using substantial taxpayer money and sent back to the Federal Bureau of Investigation ("FBI") over September 12, and 13, 2001.

The Complainant stated that, according to the Manual, prior to entering their work in a log, NJSP was required to prepare Forms SP-631 and 631A. The Complainant further contended that the Manual also requires NJSP to produce three (3) evidence forms (SP629, SP660, and SP670). The Complainant contended that "evidence submitted" is not the same as the resulting work product. The Complainant thus argued that even if the original film rolls were returned to the FBI, NJSP should have maintained "contact sheets and prints" in accordance with relevant retention schedules. The Complainant also took issue with the Appellate Division's description of the logbook in Lawyers.

The Complainant thus requested that the GRC should require NJSP to produce to it the database of records relevant to Case No. 1766 and any others reasonably associated therewith. The Custodian further requested that the GRC direct NJSP to retrieve from the FBI produced records sent to the latter, including evidence forms showing when said records were returned. The Complainant finally requested that the GRC require NJSP to "faithfully" duplicate the returned records to fulfill this OPRA request and their retention requirements.

⁴ On January 29, 2024, the GRC allowed the Complainant through February 5, 2024, to submit his SOI reply.

⁵ The Complainant included references to an OPRA request from February 2023 that is not at issue in this complaint.

Analysis

Timeliness

OPRA provides that a custodian may request an extension of time to respond to the complainant's OPRA request, but the custodian must provide a specific date by which he/she will respond. Should the custodian fail to respond by that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i).

In Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant's request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian's request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that "because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i)."

[Id.]

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant's OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian's request for an extension of time [to a specific date] to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

[Id.]

Moreover, in Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), the Council again addressed whether the custodian lawfully sought an extension

of time to respond to the complainant’s OPRA request. The Council concluded that because the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the custodian properly requested the extension pursuant to OPRA. See also Rivera, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone, GRC 2013-280, the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a “deemed” denial of access, the Council looked to what was “reasonably necessary.”

In the instant complaint, the Custodian sought multiple extensions for the Complainant’s OPRA request as follows:

Date of Request for Extension	New Deadline for Response	Reason for Extension
October 31, 2023	November 16, 2023	N/A
November 16, 2023	December 8, 2023	N/A
December 8, 2023	December 29, 2023	N/A

The Custodian extended the response time on three (3) occasions prior to the filing of this complaint for a total of forty-one (41) business days. As noted above, a requestor’s approval is not required for a valid extension. However, it should be noted that the Complainant objected to any further extensions after the Custodian’s November 16, 2023 extension response.

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already had to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian’s ability to respond effectively to the request.⁶ Id.

Here, the Complainant’s OPRA request sought “no-loss copies of all records” related to Case No. 1766 dating back to September 12, 2001. In the SOI, the Custodian affirmed that the OPRA request was similar to one that was previously subject to litigation in Lawyers. The Custodian further affirmed that he needed additional time to discuss Lawyers with his colleagues, review extensive search certifications, and to account for other factors like holidays and mandatory trainings. The Custodian also noted that the Complainant’s request sought “records” related to Case No. 1766 but did not identify specific records.

⁶ “Extenuating circumstances” could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency’s need to reallocate resources to a higher priority due to *force majeure*.

From the Custodian's receipt of the Complainant's OPRA request, he initially sought twelve (12) business days to respond. The Custodian then sought an additional two (2) extensions of twenty-nine (29) business days. Thus, the Custodian sought, in addition to the original seven (7) business days, an extension of over a full month of business days.

In determining whether the extensions were ultimately unreasonable, the GRC looks to its prior decisions in Rodriguez v. Kean Univ., GRC Complaint No. 2015-312 (March 2017) and Rodriguez v. Kean Univ., GRC 2016-196. In Rodriguez, GRC 2015-312, the Council found that the Custodian's thirty-nine (39) business day extension to respond that no records exist was unreasonable. The Council also took the custodian and a Kean employee to task for lacking urgency in responding. In Rodriguez, GRC 2016-196, the Council found the facts to be distinguishable from Rodriguez, GRC 2015-312 and determined that the extensions were reasonable because the request there required a more significant search. The Council also found that the Custodian's early response coming four (4) days before the end of the extended time frame was compelling evidence indicating that the extension was reasonable.

The GRC sees the facts here as more on point with Rodriguez, GRC 2015-312. Specifically, while the Custodian ultimately sought two (2) more business days than in GRC 2015-312, the length of time needed to reach a conclusion that no records exist is excessive. This complaint departs from Rodriguez, GRC 2016-196 in that the extensions were found to be reasonable in that case based on the search necessary to confirm the non-existence of records. Here, the Custodian determined that no records existed after reviewing certifications already submitted to and ruled on by the courts in Lawyers. Based on the courts' extensive opinion in that case and the Custodian's recognition of the similarity of both OPRA requests early in the response time frame, the GRC is unpersuaded that the response required an additional forty-one (41) calendar days.

Thus, based on the evidence of record, the GRC finds that extending the response time for the OPRA request to the extent demonstrated in the instant matter was excessive and contrary to OPRA's mandate to "promptly comply" with a records request and to grant or deny access "as soon as possible" N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). The GRC finds it unreasonable for NJSP to take two (2) months to determine that no records responsive exist in light of the Custodian's application of the ruling in Lawyers.⁷

Accordingly, the Custodian did not bear his burden of proof that he timely responded to the portions of the Complainant's OPRA request not seeking "immediate access" records, based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Rodriguez, GRC 2015-312. Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).

Unlawful Denial of Access

⁷ The GRC does not address Custodian's assertion as to the validity of the subject OPRA request because he did not specifically deny the request on that basis.

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 has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). In O’Dea (O.B.O. N.J. Spotlight) v. N.J. Dep’t of Treasury, GRC Complaint No. 2012-109 (April 2013), the complainant sought access to certain assessment forms for multiple properties. The custodian responded stating that no records existed and subsequently advised the complainant that the responsive records were forwarded to a federal agency and not retained by Treasury. Upon review of the facts, the Council, citing Pusterhofer, GRC 2005-49, held that no unlawful denial of access occurred because the requested records were in the possession of a federal agency and thus not in the Custodian’s possession. The Council further held that, because the Freedom of Information Act rather than OPRA governed federal agency record disclosure, it had no authority to order the federal agency in possession of the records to return same to Treasury for disclosure. Id. at 5 (citing Hwang v. Ridgewood Post Office, GRC Complaint No. 2012-117 (April 2012)).

In the matter before the Council, the Complainant’s OPRA request sought “no-loss copies of all records” related to case No. 1766 occurring in September 2001. Following multiple extensions, the Custodian responded stating that NJSP did not make or maintain any responsive records. The Custodian subsequently certified to this fact in the SOI and noted that a similar request was already addressed in Lawyers. The Custodian attached not only the trial court and Appellate Division decisions in Lawyers, but also the certifications submitted to the court in association therewith. The Complainant responded to the SOI disputing that no records existed based on Manual procedures and the State’s retention schedule. The Complainant thus requested that the GRC demand review of all databases associated with the case, require NJSP to obtain the original documents from the FBI, and make copies thereof to satisfy the instant OPRA request.

Initially, the GRC notes that although the Complainant generally identified a generic class of responsive records, it is clear from the filings on the record that the actual records at issue are film, photographs, and tracking records associated with the case. The GRC bases this position on the Complainant’s inclusion of the logbook entry in his OPRA request and complaint, as well as his SOI reply arguments where he focuses on the Manual’s procedures for handling evidence, including film and retention schedules associated with photographs and slides.

Upon review, the GRC finds compelling the Custodian’s argument that no records exist. Support for this response is found in the extensive record associated with Lawyers. Specifically, the trial court held that no unlawful denial occurred because no records existed based on six (6) NJSP certifications detailing the extensive search undertaken to review responsive records. Of importance, one of those certifications from a Unit employee stated that NJSP “does not maintain copies of the images or film it processes upon request from an outside agency.” Id. at 7. That employee further confirmed that “neither the originals nor copies of the contact sheets or film rolls identified in entry #1766 were maintained by the NJSP.” Id. at 7-8. The Appellate Division, in

affirming the trial court, specifically cited the forgoing as overly persuasive and held that plaintiffs failed to provide proof to refute same.

Similarly, the Complainant's contention here that NJSP should be maintaining disclosable records is speculative, and thus does not meet the standard of competent, credible evidence that no records exist. The Complainant provides no evidence beyond the Manual and retention policies to support this contention. At most, that evidence suggests that NJSP *should have* created and maintained certain forms and photographs,⁸ which does not overcome the certifications made in Lawyers that the Custodian resubmitted here. Further, as already discussed in O'Dea, GRC 2012-109, the GRC has no ability to demand that NJSP retrieve records from the FBI, a federal government entity, to fulfill this OPRA request.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainants' OPRA request seeking "all records" regarding Case No. 1766, an investigation conducted more than twenty (20) years before the submission of the OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records 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 did not bear his burden of proof that he timely responded to the portions of the Complainant's OPRA request not seeking "immediate access" records, based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2015-312 (March 2017). Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
2. The Custodian has borne his burden of proof that he lawfully denied access to the Complainants' OPRA request seeking "all records" regarding Case No. 1766, an investigation conducted more than twenty (20) years before the submission of the OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records 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 29, 2025

⁸ The GRC notes that it has no authority over whether a public agency violated the State's retention schedules. McBride v. N.J. Office of Homeland Security & Preparedness, GRC Complaint No. 2020-250 (June 2022) (citing N.J.S.A. 47:1A-7(b)).