



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 24, 2026 Government Records Council Meeting

Ligia Alberto
Complainant

Complaint No. 2023-304

v.

Bergenfield Public School District (Bergen)
Custodian of Record

At the February 24, 2026, public meeting, the Government Records Council (“Council”) considered the February 17, 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 the Custodian did not bear her burden of proof that she 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 immediately results in a “deemed” denial of the Complainant’s OPRA request item Nos. 1-3 seeking employment contracts pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005). See also Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012). However, the GRC confirms that the disclosed records sufficiently address the totality of the Complainant’s OPRA request, and thus the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant as of December 15, 2023.

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 February 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: February 26, 2026

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 24, 2026 Council Meeting**

**Ligia Alberto¹
Complainant**

GRC Complaint No. 2023-304

v.

**Bergenfield Public School District (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. Christopher Tully’s County approved and fully executed contract (current)
2. Darlene Markman’s fully executed contract (current)
3. Tara Schneider 2023 fully executed sidebar agreement
4. Payroll record for Tara Schneider from February 2023 to October 1, 2023

Custodian of Record: JoAnn Khoury-Frias

Request Received by Custodian: December 7, 2023

Response Made by Custodian: December 13, 2023; December 15, 2023

GRC Complaint Received: December 18, 2023

Background³

Request and Response:

On December 7, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request in person to the Custodian seeking the above-mentioned records. On the same day and on December 8, 2023, the Complainant e-mailed the Custodian memorializing her in-person OPRA submission and her two (2) visits to the Custodian’s office to obtain the requested records, noting that they are subject to immediate access. On December 13, 2023, the fourth (4th) business day after receipt of the OPRA request, the Custodian responded in writing disclosing records responsive to each OPRA request item. On December 15, 2023, the Custodian upon realizing she inadvertently sent unexecuted contracts responded by disclosing fully executed copies of the responsive contracts.

¹ No legal representation listed on record.

² Represented by Rodney T. Hara, Esq., of Fogarty & Hara, Esqs. (Fair Lawn, 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.

Denial of Access Complaint:

On December 18, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).⁴ The Complainant asserted that she was not granted immediate access to the requested records pursuant to N.J.S.A. 47:1A-5. The Complainant stated that she delivered her OPRA request in person to the Custodian at her office on December 7, 2023. The Complainant stated that the Custodian verbally denied her request at that time and the Complainant memorialized the interaction in an e-mail to the Custodian on the same day. The Complainant returned the next day December 8, 2023, intending to access the requested records. The Complainant stated the Custodian verbally denied her request for immediate access at that time. The Complainant stated that she also memorialized the second encounter in an e-mail to the Custodian on the same day. The Complainant asserted that she did not receive a response to either e-mail.

The Complainant stated that she finally received copies of contracts responsive to OPRA request item Nos. 1 and 2, but they were unsigned. The Complainant argued that the Custodian “continues to deny me access to the records.”

Statement of Information:

On January 30, 2024, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Complainant’s OPRA request was delivered to her in person on December 7, 2023. The Custodian certified that her search included reviewing personnel records, payroll records, and labor relation files. The Custodian certified that she responded in writing on December 13, 2023 disclosing records responsive to each OPRA request item.

The Custodian asserted that the Complainant appeared at her office on December 7, 2023, to hand deliver the OPRA request and meet with the Custodian to receive the records requested. The Custodian informed the Complainant that she was unable to fulfill her request at that time due to previously scheduled meetings that afternoon, but that she would provide a response as soon as possible thereafter. The Custodian stated that the Complainant returned to her office the next day and stated that she would wait in the office for the requested records. The Custodian contended that she never denied access to the records but reminded the Complainant of the procedure for OPRA requests, and that she would need to review the request prior to any disclosure of records. The Custodian stated that the Complainant stated that she would file a complaint and have the Custodian sued for not complying with her OPRA request.

The Custodian argued that, because the Complainant instituted litigation against the Board of Education (“BOE”) in the past, the OPRA request needed to be reviewed by the BOE’s attorney for advice. The Custodian stated that, after consulting with the BOE’s attorney, she disclosed the requested records to the Complainant via e-mail on December 13, 2023. The Custodian admitted that she inadvertently sent unsigned copies of the contracts requested and disclosed to the Complainant executed copies of the requested contracts on December 15, 2025, to cure the issue.

⁴ The Complainant verified her complaint on December 11, 2023; however, it was returned because she did not include copies of the subject OPRA request or any associated correspondence.

The Custodian maintained that the documents requested were provided to the Complainant within seven (7) business days of her request.

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).⁵ 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 October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).⁶ Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that "immediate access language of OPRA (N.J.S.A. 47:1A-5(e)) suggests that the Custodian was still obligated to immediately notify the Complainant." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, either granting or denying access, requesting additional time to respond, or requesting clarification of the request. Additionally, if immediate access items are contained within a larger OPRA request containing a combination of records requiring a response within seven (7) business days and immediate access records requiring an immediate response, a custodian still has an obligation to respond to immediate access items immediately. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013).

Here, the Complainant submitted the subject OPRA request on December 7, 2023; item Nos. 1-3⁷ thereof sought "immediate access" employment contracts. N.J.S.A. 47:1A-5(e). In the

⁵ 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.

⁶ OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that invoices are "immediate access" records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

⁷ The GRC notes that "payroll record" sought in OPRA request item No. 4 is not identified as an "immediate access" item under N.J.S.A. 47:1A-5(e).

SOI, the Custodian certified that she verbally responded to the Complainant's hand-delivered OPRA requests on December 7 and 8, 2023, stating that she needed time to review her request prior to disclosing any records. The Custodian certified that she did not disclose the responsive contracts immediately upon receipt of the OPRA request because she needed to consult the BOE's attorney prior to disclosure because the Complainant previously sued the BOE. Further, the evidence of record shows that the Custodian did not respond in writing upon receipt of the OPRA request or to either of the Complainant's follow-up e-mails from December 7 and 8, 2023.

Ultimately the Custodian disclosed the unsigned responsive records on December 13, 2023, and the signed responsive records on December 15, 2023, upon realizing she inadvertently sent copies of unexecuted contracts. As such, although the Custodian verbally responded and disclosed records within the statutorily mandated seven (7) business day timeframe, the evidence of record reveals that the Custodian failed to immediately respond *in writing* to the Complainant's OPRA request item Nos. 1 through 3.

Therefore, the Custodian did not bear her burden of proof that she 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 immediately results in a "deemed" denial of the Complainant's OPRA request item Nos. 1-3 seeking employment contracts pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98. See also Harris, GRC 2011-65. However, the GRC confirms that the disclosed records sufficiently address the totality of the Complainant's OPRA request, and thus the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant as of December 15, 2023.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that: the Custodian did not bear her burden of proof that she 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 immediately results in a "deemed" denial of the Complainant's OPRA request item Nos. 1-3 seeking employment contracts pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005). See also Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). However, the GRC confirms that the disclosed records sufficiently address the totality of the Complainant's OPRA request, and thus the GRC declines to order any further action because the Custodian disclosed all responsive records to the Complainant as of December 15, 2023.

Prepared By: Maria M. Rossi
Staff Attorney

February 17, 2026