



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

April 29, 2025 Government Records Council Meeting

David Weiner
Complainant

v.

County of Essex
Custodian of Record

GRC Complaint No. 2023-74

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 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 the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. See N.J.S.A. 47:1A-6; 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 29th Day of April 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: May 5, 2025



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**David Weiner¹
Complainant**

GRC Complaint No. 2023-74

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. “Document(s) delineating the names and titles of those employees” from the Division of Family Assistance and Benefits (“DFAB”) allowed to park within the parking garage and surface lots at 320-321 University Avenue in Newark, NJ.
2. “Document(s) delineating the names and titles of those employees” of other County of Essex (“County”) agencies, “such as the Detention Center,” allowed to park within the parking garage and surface lots at 320-321 University Avenue in Newark, NJ.
3. “Document(s) delineating the names and titles of those employees” from DFAB “managerially-compelled” to park in the juror’s surface lot at the Hall of Records in Newark, NJ.

Custodian of Record: George Seylaz
Request Received by Custodian: March 14, 2023
Response Made by Custodian: March 23, 2023
GRC Complaint Received: April 3, 2023

Background³

Request and Response:

On March 14, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 23, 2023, the Custodian responded in writing extending the response time frame through March 30, 2023. On March 30, 2023, the Custodian responded in writing stating that DFAB advised that no responsive records exist.

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.

Denial of Access Complaint:

On April 3, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant appeared to dispute the Custodian’s response that no records existed but did not include any arguments to support his position. The Complainant instead noted that he received a response stating that “no documents have been provided,” “[p]lease see attached” on the “Detail Summary” page, and reiterating the Custodian’s denial on the “Records Denied List” page.

Statement of Information:⁴

On August 22, 2024, the Custodian filed a Statement of Information (“SOI”).⁵ The Custodian certified that he received the Complainant’s OPRA request on March 14, 2023. The Custodian affirmed that his search consisted of contacting DFAB employee Al Fusco, who conducted a search and advised that no records existed. The Custodian certified that, after extending the response time frame, he responded in writing on March 30, 2023, denying the OPRA request on the basis that no records existed.⁶

The Custodian included a discussion of events occurring in mediation and related communication as part of the SOI.⁷

Analysis

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.

Initially, the GRC notes that the Custodian addressed discussions and actions, with accompanying communications, occurring while this complaint was in mediation. The Uniform

⁴ On April 11, 2023, this complaint was referred to mediation. On November 3, 2023, this complaint was referred back to the GRC for adjudication.

⁵ The Custodian initially submitted an SOI on November 13, 2023 that exceeded fifty (50) pages. Based on this, the GRC asked the Custodian to submit a hardcopy of the SOI pursuant to N.J.A.C. 5:105-2.4(c). Upon receipt of the hardcopy thereafter, the GRC found that the Custodian included copious confidential mediation discussions and communications. N.J.S.A. 2A:23C-1 et seq. Thus, on August 19, 2024, the GRC returned the SOI requiring the Custodian to refile it omitting any reference to, or communication associated with mediation by close of business on August 26, 2024.

⁶ The Custodian stated that a legal certification from Mr. Fusco was attached to the SOI; however, the GRC was unable to locate it.

⁷ The GRC notes that pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications that occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative, or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

Mediation Act prohibits the use of mediation communications in administrative proceedings absent all parties waiving the privilege, which has not occurred here. N.J.S.A. 2A:23C-4. For this reason, the GRC cannot consider the portion of the SOI discussing the mediation and related communications and must instead address the complaint on its original merits and the limited attestations contained therein that do not address mediation communications.

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, the Complainant's OPRA request sought "[d]ocuments delineating" information about employee parking.⁸ The Custodian responded stating that DFAB confirmed no responsive records existed. Following the filing of this complaint, the Custodian certified in the SOI that he responded advising that no records existed. Upon review, the GRC is persuaded that no unlawful denial of access has occurred because, as in Pusterhofer, GRC 2005-49, no records exist. The County stated that no records existed, and the Custodian certified to this response. Further, there is no evidence in the record to refute this certification. 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. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to the OPRA request exist. See N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. See N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Executive Director

April 15, 2025

⁸ The GRC notes that the Complainant's request is invalid on its face because it seeks generic "documents delineating" related to employee parking that would require research of the County's records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). See also Weiner v. Cnty. of Essex, GRC Complaint No. 2022-213 (October 2023) (holding that the request item seeking "documents delineating" was invalid because it required research).