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DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

May 20, 2025 Government Records Council Meeting

David Weiner
Complainant

Complaint No. 2023-80

v.

County of Essex
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council (“Council”) considered the May 13, 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 Division of Family Assistance and Benefits’ failure to conduct a reasonable search resulted in an insufficient response. Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, Mr. Fusco failed to locate responsive records until after the filing of the instant complaint. Thus, because of this insufficient search, an unlawful denial of access to the responsive records occurred. N.J.S.A. 47:1A-6. However, the GRC declines to order any further action because the Custodian disclosed all responsive records that existed on April 19, 2023, May 1, 2023, and as part of the Statement of Information.

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 20th Day of May 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 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 20, 2025 Council Meeting**

**David Weiner¹
Complainant**

GRC Complaint No. 2023-80

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. “Documents delineating the number of clients” the Division of Family Assistance and Benefits (“DFAB”) annually serviced “broken out by year” between January 1, 2019 to present.
2. “Documents delineating the dates overtime was offered” by DFAB and the costs between January 1, 2019 to present.
3. “Documents delineating the titles of all [DFAB] employees” between January 1, 2019 and present.
4. “Documents delineating the number of employees within each of the [DFAB] titles” between January 1, 2019 and present.
5. “Documents delineating the number of vacancies” within DFAB between January 1, 2019 and present.
6. “Documents delineating the number of staff turnovers” between January 1, 2019 and present.
7. “Documents delineating the number of overdue cases within DFAB . . . broken out by each year and type of cases” between January 1, 2019 and present.

Custodian of Record: George Seylaz

Request Received by Custodian: March 3, 2023

Response Made by Custodian: April 5, 2023

GRC Complaint Received: April 6, 2023

Background³

Request and Response:

On March 3, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 5, 2023, the Custodian e-

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.

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mailed Al Fusco of DFAB seeking an update and noting that the response deadline⁴ passed on April 3, 2023. Mr. Fusco responded stating that he was not given any records responsive to the subject OPRA request.

On April 5, 2023, shortly after receiving Mr. Fusco's e-mail, the Custodian responded in writing stating that DFAB has "not been provided with any documents responsive to the [OPRA] request" and it is considered closed.

Denial of Access Complaint:

On April 6, 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 that "no documents have been provided," noted "[p]lease see attached" on the "Detail Summary" page and reiterated the Custodian's denial on the "Records Denied List" page.

Supplemental Response:

On April 19, 2023, Mr. Fusco e-mailed the Custodian the following responses by OPRA request item:

1. Program numbers are available at <https://nj.gov/humanservices/dfd/news/cps.html>.
2. No records exist.
3. Attached is a staffing/vacancy report covering the identified time period.
4. See the record disclosed in response to OPRA request item No. 3.
5. See the record disclosed in response to OPRA request item No. 3.
6. Attached is a DFAB separation list covering the identified time period.
7. No records exist.

On the same day, the Custodian allegedly sent the Complainant Mr. Fusco's response including the disclosable records.

On April 26, 2023, Mr. Fusco e-mailed the Custodian stating that he recently received an overtime report for the years 2019 through 2023 responsive to OPRA request item No. 2. Mr. Fusco stated that he would send these records to the Custodian on May 1, 2023. On May 1, 2023, the Custodian e-mailed the Complainant stating that he was in receipt of a record responsive to OPRA request item No. 2, but it would have to be retrieved because he did not believe he could e-mail it. On the same day, the Complainant asked a colleague to make arrangements to obtain the responsive record from the Custodian.

⁴ The Custodian alleged that he extended the time frame on March 14, 2023 and March 21, 2023; however, the supporting documentation in the record is unclear whether the Custodian sent an actual written response to the Complainant. Thus, while the record suggests a "deemed" denial of access occurred, the GRC will not address this issue because the Complainant did not raise it.

Statement of Information:⁵

On December 27, 2023, the Custodian filed a Statement of Information (“SOI”) attaching a legal certification from Mr. Fusco. The Custodian certified that he received the Complainant’s OPRA request on March 3, 2023. The Custodian certified that his search involved sending the OPRA request to DFAB, where Mr. Fusco initiated a search. See Fusco Cert. § 4. The Custodian averred that he took two (2) extensions of time to allow for the search to continue. The Custodian certified that after receiving an e-mail on April 5, 2023, from Mr. Fusco that no records were produced, he responded in writing on the same day denying the OPRA request. The Custodian certified that thereafter, Mr. Fusco produced multiple records responsive to the OPRA request that were disclosed to the Complainant on April 19, 2023, and May 1, 2023. The Custodian attached to the SOI those records disclosed to the Complainant in support of his disclosures.

The Custodian argued that the Council has consistently held that no unlawful denial of access could have occurred where a custodian certifies that all responsive records that existed were provided to a complainant. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Owens v. Mt. Holly Twp. (Burlington), GRC Complaint No. 2013-233 (February 2014). The Custodian argued that the County disclosed the only records within its possession responsive to the Complainant’s OPRA request. The Custodian thus requested that the Council find that no unlawful denial of access occurred here.⁶

Analysis

Sufficiency of Search

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.

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 additional records responsive to the complainant’s request. The GRC held that the custodian had performed an

⁵ On May 11, 2023, this complaint was referred to mediation. On November 21, 2023, this complaint was referred back to the GRC for adjudication.

⁶ The Custodian included additional information regarding correspondence between the parties while this complaint was in mediation. 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.

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inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Here, the Complainant's OPRA request sought multiple "documents delineating" DFAB client interactions and personnel transactions. The Custodian forwarded the OPRA request to DFAB, where Mr. Fusco conducted a search for records. On April 5, 2023, after Mr. Fusco stated that he did not receive any records, the Custodian responded to the Complainant advising that DFAB had "not been provided" with any responsive records. This complaint ensued, where the Complainant appeared to challenge the response that no records existed. Following the filing of the complaint, the Custodian received from Mr. Fusco multiple responsive records that he disclosed on April 19, 2023, and May 1, 2023. In the SOI, the Custodian certified that he ultimately disclosed all records that existed on those dates and attached them thereto.

Upon review, the evidence of record supports that an insufficient search occurred. However, that insufficient search actually rests with Mr. Fusco and DFAB personnel. Specifically, the Custodian relied on DFAB to conduct a search, which apparently did not yield responsive records at first. It was not until after the filing of this complaint that DFAB was able to locate and produce records responsive to the subject OPRA request. Like Schneble, DFAB has an obligation to perform a sufficient search and disclose records in a timely manner. This did not occur, thus delaying the disclosure of responsive records. Ultimately, the Custodian certified in the SOI that all records responsive to the OPRA request⁷ were provided and no other records exist.

Accordingly, DFAB's failure to conduct a reasonable search resulted in an insufficient response. Schneble, GRC 2007-220. Specifically, Mr. Fusco failed to locate responsive records until after the filing of the instant complaint. Thus, as a result of this insufficient search, an unlawful denial of access to the responsive records occurred. N.J.S.A. 47:1A-6. However, the GRC declines to order any further action because the Custodian disclosed all responsive records that existed on April 19, 2023, May 1, 2023, and as part of the SOI.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Division of Family Assistance and Benefits' failure to conduct a reasonable search resulted in an insufficient response. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, Mr. Fusco failed to locate responsive records until after the filing of the instant complaint. Thus, because of this insufficient search, an unlawful denial of access to the responsive records occurred. N.J.S.A. 47:1A-6. However, the GRC declines to order any further action because the Custodian disclosed all responsive records that existed on April 19, 2023, May 1, 2023, and as part of the Statement of Information.

Prepared By: Frank F. Caruso
Executive Director

May 13, 2025

⁷ The GRC notes that the Complainant's request is invalid on its face because it seeks generic "documents delineating" related to client interactions and personnel transactions. 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).

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