



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

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Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

Victorina Salvador
Complainant

Complaint No. 2023-98

v.

City of Union City (Union)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 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 her burden of proof that she timely responded to the Complainant’s three (3) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 requests 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). However, the GRC declines to order any further action regarding OPRA request No. 1 because the Custodian disclosed the responsive record on May 17, 2023.
2. The Complainant’s request No. 2 is invalid because it failed to identify any specific government record and instead sought information connected to Mayor Stack’s schedule. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015). Thus, notwithstanding the Custodian’s failure to response, no unlawful denial of access to the Complainant’s request No. 2 occurred because it was invalid. N.J.S.A. 47:1A-6.
3. The records sought in the Complainant’s OPRA request No. 3 were connected to a political fundraising event and not “government records” subject to disclosure under OPRA. See N.J.S.A. 47:1A-1.1; Carter v. Franklin Fire Dist. No. 1, 2018 N.J. Super. Unpub. LEXIS 2189 (App. Div. 2018). Thus, notwithstanding the Custodian’s failure to respond, no unlawful denial to OPRA request No. 3 occurred. See N.J.S.A. 47:1A-6.
4. Although the Custodian failed to timely respond to the Complainant’s three (3) OPRA requests, she ultimately disclosed the record responsive to OPRA request No. 1.

Further, no unlawful denial of access to OPRA request Nos. 2 and 3 occurred because the former is invalid and any records potentially responsive to the latter are no considered “government records” for purposes of OPRA. 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 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 25th Day of March 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: March 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

**Victorina Salvador¹
Complainant**

GRC Complaint No. 2023-98

v.

**City of Union City (Union)²
Custodial Agency**

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

1. “[A]ny and all” daily timesheets, appointment log, salary (including “year-to-date” (“YTD”) earnings for Alejandro Velazquez from July 2022 to present.
2. “Any and all information pertaining, appointment logs, visitor including ceremonies performed” by Mayor Brian Stack from January 2022 to present.
3. From the City of Jersey City’s (“City”) First Annual Spring Gala held April 20, 2023 at the Graycliff:
 - a. “Minutes of agenda;”
 - b. List of attendees;
 - c. List of municipal employees;
 - d. “Available and allowable budget for this event;”
 - e. “Specify and identify account from which funds were used to pay for this event.”

Custodian of Record: Hilda Rosario

Request Received by Custodian: April 21, 2023

Response Made by Custodian: May 17, 2023

GRC Complaint Received: May 4, 2023

Background³

Request:

On April 21, 2023, the Complainant submitted three (3) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records.

¹ No legal representation listed on record.

² Represented by Angelo Auteri, Esq., of Scarinci Hollenbeck, LLC (Little Falls, 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 May 4, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to her OPRA requests. The Complainant argued that the City had a history of ignoring OPRA requests for “budget or accounting” records, as evidenced by its failure to respond to two (2) prior OPRA requests she submitted in December 2022 and early April 2023.

Response:

On May 5, 2023, the tenth (10th) business day after receipt of OPRA request No. 1, the Custodian allegedly responded in writing extending the response time frame through May 9, 2023. On May 17, 2023, the Custodian allegedly responded in writing disclosing “Employee Earnings Records” for Mr. Velasquez.⁴

Statement of Information:

On June 1, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA requests on April 21, 2023. The Custodian affirmed that she contacted the Office of the Chief Financial Officer to obtain earnings statements responsive to OPRA request No. 1. The Custodian certified that after extending the response time frame, she responded in writing on May 17, 2023, disclosing to the Complainant the obtained earnings reports.

The Custodian acknowledged that she failed to timely respond to the Complainant’s OPRA requests; thus, they were “deemed” denied per N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). The Custodian contended that notwithstanding this violation, she disclosed responsive records for OPRA request No. 1, and the remaining requests were invalid because they sought information and records that do not fall within the definition thereof.

The Custodian argued that OPRA request No. 2 seeking “information” was impermissible under OPRA pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian argued that the request was written in “such a convoluted manner that it was impossible” for her to discern those records the Complainant sought.

The Custodian argued that, regarding OPRA request No. 3, the Complainant sought records related to a political fundraiser for Mayor Stack and not records kept in the course of his official business. The Custodian thus contended that the records sought were not considered “government records” as defined in N.J.S.A. 47:1A-1.1. The Custodian argued, that based on this, she was not required to disclose any records associated with the Spring Gala event.

The Custodian finally contended that her failure to timely respond did not amount to a knowing and willful violation as defined in N.J.S.A. 47:1A-11 and addressed in Executive Com’n On Ethical Standards v. Salmon, 295 N.J. Super. 86, 108 (App. Div. 1996). The Custodian asserted

⁴ The Custodian did not provide copies of the relevant submissions in the Statement of Information. The GRC notes that the Complainant did not subsequently dispute the Custodian’s disclosure claim.

that her failure to timely respond and additional inability to comply with the extended time frame were the result of an “administrative oversight” and “miscommunications.” The Custodian contended that, notwithstanding these internal issues, she ultimately provided to the Complainant a record responsive to OPRA request No. 1 on May 17, 2023.

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).

Here, the Complainant submitted three (3) OPRA requests on April 21, 2023. After receiving no response, on May 4, 2023, the Complainant filed the instant complaint, arguing that the City had a history of not disclosing records in response to OPRA. In the SOI, the Custodian acknowledged that a “deemed” denial of access occurred and that it was the result of an “administrative oversight.” The Custodian further certified that she provided the Complainant a record responsive to OPRA request No. 1 on May 17, 2023. However, the Custodian did not address any response to OPRA request Nos. 2 and 3, and there is no evidence in the record to support that she responded at all to either OPRA request. Based on the forgoing, the facts support the presence of a “deemed” denial in this complaint.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s three (3) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 requests pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. However, the GRC declines to order any further action regarding OPRA request No. 1 because the Custodian disclosed the responsive record on May 17, 2023.

Validity of Request

The New Jersey Appellate Division has held that:

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.

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

[MAG, 375 N.J. Super. at 546 (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁶ N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Invalid OPRA requests typically fall into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant's request item No. 2 seeking "[p]roof of submission" was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge's finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking "[a]ny and all documents and evidence" relating to an investigation being conducted by the Somerset County Prosecutor's Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in [MAG], [Bent] and the Council's decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).

[Id. See also Schulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking "all documents" was overly broad and thus invalid).]

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court held that plaintiff's request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

In the matter before the Council, the Complainant's OPRA request No. 2 sought "[a]ny and all information pertaining, appointment logs, visitor including ceremonies performed" by Mayor Stack for approximately fifteen (15) months. The Custodian did not respond to the OPRA request but subsequently argued in the SOI that it was invalid. The Custodian contended that the

request sought “information” and did not provide enough specificity for her to determine which records were sought.

Upon review of this particular request, the GRC agrees that it is invalid under OPRA. A strong similarity can be drawn between this request and the one addressed by the Lagerkvist court. That request sought “all available documentation for out-of-state travel from 2012 to present Chris Christie and/or members of his senior staff to attend or participate in third-party funded events.” Id. at 232-233. The court affirmed finding that plaintiff’s request required research because it failed to identify specific records for specific events and parties attending those events.

The GRC finds the request at issue here to suffer many of the same issues. Specifically, the request as crafted appears to seek “information pertaining” to Mayor Stack’s schedule or calendar over approximately 15 months, including his visitors and events he has attended may have attended as an officiant.⁷ The request requires the Custodian to determine whether an unknown universe of records pertains to any appointments or events in which Mayor Stack participated. For these reasons, the GRC is satisfied that request No. 2 is invalid and the Custodian was not required to engaged in an open-ended search to find any record including “information” on Mayor Stack’s schedule for a fifteen (15) month period.

Accordingly, the Complainant’s request No. 2 is invalid because it failed to identify any specific government record and instead sought information connected to Mayor Stack’s schedule. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-37. Thus, notwithstanding the Custodian’s failure to respond, no unlawful denial of access to the Complainant’s request No. 2 occurred because it was invalid. N.J.S.A. 47:1A-6.

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.

In Carter v. Franklin Fire Dist. No. 1, 2018 N.J. Super. Unpub. LEXIS 2189 (App. Div. 2018), the complainant appealed the Council’s decision finding that Political Action Committee (“PAC”) e-mails housed on the District’s server were not “government records” subject to disclosure. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-318 (September 2016). The complainant argued that the Council erred in deciding that the requested e-mails were not “government records” for several reasons. Among them, the complainant argued that the Council failed to consider a resolution stating that the District’s usage policy converted

⁷ The GRC notes that precedential case law provides that public official private calendar may be withheld under the executive privilege exemption; however, any public appointments do not fall within the same exemption. N.J.S.A. 47:1A-9(b); Percella v. City of Bayonne (Hudson), GRC Complaint No. 2017-210 (September 2019); McDonald v. City of Jersey City (Hudson), GRC Complaint No. 2015-274 (January 2017) (citing Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 2017-18 (App. Div. 2005)).

the requested e-mails into “government records.” The court disagreed and affirmed the Council’s decision, reasoning that:

The plain language of N.J.S.A. 47:1A-1.1 clearly and unambiguously defines “government record” as “information stored or maintained electronically . . . that has been made, maintained or kept on file *in the course of* [a public officer's or public agency's] *official business* . . . or that has been received *in the course of* [a public officer's or public agency's] *official business* [.]” (Emphasis added). The Legislature did not include the words “personal business” or “any business” in the definition of “government record,” indicating its intent to limit disclosure of information stored or maintained electronically on a public server, including emails, to that which concerns the “official” business of a public entity or public officer, meaning emails that were “[a]uthorized or approved by a proper authority[.]” See Black's Law Dictionary, (10th ed. 2014). The PAC money emails were not “government records” under OPRA because they did not pertain in any way to the District’s and Commissioners’ official business and were not authorized or approved by the District. They were personal in nature not subject to disclosure under OPRA.

[Id. at 11-12.]

In the matter before the Council, the Complainant’s OPRA request No. 3 sought multiple records associated with a “Spring Gala” event held by Mayor Stack on April 20, 2023. The Custodian did not respond to the OPRA request but subsequently argued in the SOI that the event was a political fundraiser and was not part of Mayor Stack’s official business. The Custodian thus argued that no records associated with that event were considered “government records” for purposes of OPRA under N.J.S.A. 47:1A-1.1.

Upon review, the GRC is persuaded that no unlawful denial of access occurred to OPRA request No. 3, based on prevailing case law and the evidence of record here. Specifically, the Custodian has certified that the event for which the Complainant sought records was a political fundraiser. Further, additional support for the Custodian’s legal certification lies in the City’s online events calendar, which does not include a listing for the Spring Gala.⁸ Finally, the Complainant did not dispute the nature of the event after receipt of the SOI. In keeping with the court’s finding in Carter, political activity of an elected official does not convert any records associated therewith into a “government record” for purposes of OPRA. Thus, the fact that Mayor Stack hosted a political fundraiser while still holding his office does not convert any records associated with the planning and execution of that event into “government records” disclosable under OPRA.

Accordingly, the records sought in the Complainant’s OPRA request No. 3 were connected to a political fundraising event and not “government records” subject to disclosure under OPRA. See N.J.S.A. 47:1A-1.1; Carter, 2018 N.J. Super. Unpub. LEXIS 2189. Thus, notwithstanding the Custodian’s failure to respond, no unlawful denial to OPRA request No. 3 occurred. See N.J.S.A. 47:1A-6.

⁸ <https://www.ucnj.com/calendar> (accessed February 28, 2025).

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 “[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)).

Although the Custodian failed to timely respond to the Complainant’s three (3) OPRA requests, she ultimately disclosed the record responsive to OPRA request No. 1. Further, no unlawful denial of access to OPRA request Nos. 2 and 3 occurred because the former is invalid and any records potentially responsive to the latter are no considered “government records” for purposes of OPRA. 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 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 did not bear her burden of proof that she timely responded to the Complainant’s three (3) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 requests 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). However, the GRC declines to order any further action regarding OPRA request No. 1 because the Custodian disclosed the responsive record on May 17, 2023.

2. The Complainant's request No. 2 is invalid because it failed to identify any specific government record and instead sought information connected to Mayor Stack's schedule. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015). Thus, notwithstanding the Custodian's failure to respond, no unlawful denial of access to the Complainant's request No. 2 occurred because it was invalid. N.J.S.A. 47:1A-6.
3. The records sought in the Complainant's OPRA request No. 3 were connected to a political fundraising event and not "government records" subject to disclosure under OPRA. See N.J.S.A. 47:1A-1.1; Carter v. Franklin Fire Dist. No. 1, 2018 N.J. Super. Unpub. LEXIS 2189 (App. Div. 2018). Thus, notwithstanding the Custodian's failure to respond, no unlawful denial to OPRA request No. 3 occurred. See N.J.S.A. 47:1A-6.
4. Although the Custodian failed to timely respond to the Complainant's three (3) OPRA requests, she ultimately disclosed the record responsive to OPRA request No. 1. Further, no unlawful denial of access to OPRA request Nos. 2 and 3 occurred because the former is invalid and any records potentially responsive to the latter are not considered "government records" for purposes of OPRA. 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 unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

March 18, 2025