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State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ  
*Commissioner*

## FINAL DECISION

### January 28, 2025 Government Records Council Meeting

Anthony Salters  
Complainant

Complaint No. 2024-200

v.

City of Orange Township (Essex)  
Custodian of Record

At the January 28, 2025, public meeting, the Government Records Council (“Council”) considered the January 21, 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’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Complainant’s request item Nos. 1 through 3 were invalid because they asked questions rather than seeking specific government records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, notwithstanding the lack of a Statement of Information, the Custodian did not unlawfully deny access to the Complainant’s request because these items are invalid on their face. N.J.S.A. 47:1A-6.
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 4. Specifically, and notwithstanding the lack of a Statement of Information, the Custodian responded, judicial notice confirms, and the record reflects, that no records responsive to the OPRA request item 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 28<sup>th</sup> Day of January 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: January 30, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 28, 2025 Council Meeting**

**Anthony Salters<sup>1</sup>  
Complainant**

**GRC Complaint No. 2024-200**

**v.**

**City of Orange Township (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of the following regarding City of Orange Township (“Township”) attorney Gracia Robert Montilus, Esq.:<sup>3</sup>

1. “Is Mr. Montilus currently an employee or vendor with the [Township]?”
2. “How does he sign in to report to work?”
3. “What are his standard weekly hours?”
4. “Please provide his Financial Disclosure Statement [(“FDS”)] every year he has been employed.”

**Custodian of Record:** Joyce Lanier

**Request Received by Custodian:** June 18, 2024

**Response Made by Custodian:** July 10, 2024

**GRC Complaint Received:** August 6, 2024

**Background<sup>4</sup>**

**Request and Response:**

On June 18, 2024, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 10, 2024, the fifteenth (15<sup>th</sup>) business day after receipt of the OPRA request,<sup>5</sup> the Custodian responded in writing stating that Mr. Montilus is an employee of the Township and included a 2018 resolution supporting this fact. The Custodian denied access to OPRA request item Nos. 2 and 3 as invalid because they ask questions instead of seeking specific government records. Bent v. Stafford Police Dep’t, 381 N.J.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</sup> 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.

<sup>5</sup> The GRC notes that a “deemed” denial of access occurred here; however, such issue will not be addressed because the Complainant did not raise it in his Denial of Access Complaint.

Super. 30 (App. Div. 2005). The Custodian lastly stated that OPRA request item No. 4 is denied because the Township does not maintain responsive records.

#### Denial of Access Complaint:

On August 6, 2024, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his OPRA request was simple and sought basic “yes or no” answers. The Complainant argued that the Custodian failed to definitively answer whether Mr. Montilus was an employee or a vendor. The Complainant also argued that the Custodian failed to disclose Mr. Montilus’s FDS submissions, provide confirmation on whether he ever filed an FDS, or note the years no filing occurred.

#### Statement of Information:

On August 19, 2024, the GRC sent the Custodian a request to file the Statement of Information (“SOI”) for both complaints. On September 17, 2024, the GRC sent a “No Defense” letter to the Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC noted that the Custodian’s failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f).

### Analysis

#### Failure to Submit SOI

In furtherance of the GRC’s obligation to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to government records[,]” pursuant to N.J.S.A. 47:1A-7(b), it requires a custodian to submit a completed SOI.

The New Jersey Administrative Code provides:

Custodians shall submit a completed and signed SOI for each complaint to the Council’s staff and the complainant not later than 10 business days from the date of receipt of the SOI form from the Council’s staff. Custodians must sign the SOI .

. . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(g).]

In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the GRC sent an SOI request to the Custodian on August 19, 2024, 2024. On September 17, 2024, after the expiration of the ten (10) business day deadline, the GRC

sent the Custodian a “No Defense” letter providing her an additional three (3) business days to submit the requested SOI. The transmission also included a copy of the original SOI letter providing detailed instructions on how to properly submit an SOI. The GRC never received a completed SOI from the Custodian.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

As a result of the Custodian’s failure to submit an SOI, the GRC proceeds to address this complaint based solely on the submissions presently before it pursuant to N.J.A.C. 5:105-2.4(g).

### **Validity of Request**

The New Jersey Appellate Division has held that:

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 Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (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, 381 N.J. Super. 30;<sup>6</sup> N.J.

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

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).

The validity of an OPRA request typically falls 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).

In Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant submitted an OPRA request to the Borough on September 13, 2007, seeking answers to five (5) questions regarding a property named the Villa Maria. The Council held that the Complainant’s request was invalid because it failed to identify a specific government record. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

Here, the Complainant’s request item Nos. 1 through 3 asked direct questions about Mr. Montilus’s employment with the Township. The Custodian subsequently denied these items on the basis that they were invalid because they asked questions. The GRC finds this denial lawful based on longstanding precedent in Watt, GRC 2007-246 that requests asking questions are invalid under OPRA. See also *e.g.* Vance v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2012-188 (June 2013); Alexander v. N.J. Dep’t of Corr., GRC Complaint No. 2018-136 (June 2020). Further, the Complainant’s Denial of Access Complaint assertion that his request sought simple “yes or no” answers failed to appreciate that OPRA does not contemplate questions as a valid OPRA request.

Accordingly, the Complainant’s request item Nos. 1 through 3 were invalid because they asked questions rather than seeking specific government records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. 30, 37; Rummel, GRC 2012-188; Watt, GRC 2007-246. Thus, notwithstanding the lack of an SOI, the Custodian did not unlawfully deny access to the Complainant’s request because these items are invalid on their face. 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.

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 item No. 4 sought

FDS forms filed by Mr. Montilus. The Custodian responded advising that no responsive records existed. This complaint ensued; however, the Custodian did not submit an SOI to further support her position.

Further, N.J.A.C. 1:1-15.2(a) and (b) state that official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974).

Regarding FDS filings and potential that the Township did not maintain same, the GRC takes judicial notice of the Department of Community Affairs, Division of Local Government Services' ("LGS") "Financial Disclosure Statements and Instructions" webpage.<sup>7</sup> That website provides a portal for local government officials to file their FDS forms and a "Search" link that allows any member of the public to search FDS filings by agency and name. LGS has offered the filing system since 2014,<sup>8</sup> well prior to the date Mr. Montilus started employment with the Township. LGS's portal has operated over the years as the sole FDS submission method since that time and satisfies the statutory requirement that filers must submit the original FDS to their local municipalities. N.J.S.A. 40A:9-22.6.b.<sup>9</sup> This judicially noticed information supports the Custodian's response that the Township did not maintain Mr. Montilus's FDS filings. Additionally, the Complainant has not provided any evidence in his complaint to refute this position.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 4. Specifically, and notwithstanding the lack of an SOI, the Custodian responded, judicial notice confirms, and the record reflects, that no records responsive to the OPRA request item 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's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).

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<sup>7</sup> <https://www.nj.gov/dca/dlgs/resources/fds.shtml> (accessed December 20, 2024).

<sup>8</sup> "Local Finance Notice LFN 2024-07" (March 11, 2024) (<https://www.nj.gov/dca/dlgs/lfns/2024/2024-07.pdf>) (accessed December 20, 2024).

<sup>9</sup> Ibid. at page 3.

2. The Complainant's request item Nos. 1 through 3 were invalid because they asked questions rather than seeking specific government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, notwithstanding the lack of a Statement of Information, the Custodian did not unlawfully deny access to the Complainant's request because these items are invalid on their face. N.J.S.A. 47:1A-6.
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 4. Specifically, and notwithstanding the lack of a Statement of Information, the Custodian responded, judicial notice confirms, and the record reflects, that no records responsive to the OPRA request item 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

January 21, 2025