



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

June 24, 2025 Government Records Council Meeting

John Paff
Complainant

Complaint No. 2024-234

v.

Township of Hillside (Union)
Custodian of Record

At the June 24, 2025, public meeting, the Government Records Council (“Council”) considered the June 17, 2025, Supplemental 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 Council dismiss this complaint based on the Complainant’s written request to do so on May 19, 2025. Thus, no further adjudication is required.

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 June 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: June 26, 2025



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
June 24, 2025 Council Meeting**

**John Paff¹
Complainant**

GRC Complaint No. 2024-234

v.

**Township of Hillside (Union)²
Custodial Agency**

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

1. The “name, title, position, and length of service” for all individuals serving as the current Township of Hillside (“Township”) municipal public defender.
2. If more than one (1) public defender exists, the name of the individual with the title “Chief Municipal Public Defender.”
3. A copy of the contract between each of the public defenders and the Township.
4. A record detailing the compensation method for each public defender if not included in the contracts sought in item No. 3 above.
5. If the salary is a fixed annual amount by ordinance or resolution, a copy thereof.
6. The most recent annual report as required by Township Code § 4-35.5 showing number of defendants assigned to the public defender, the number of defendants charged a fee, and the total fee amount.

Custodian of Record: Brook L. Nieves³

Request Received by Custodian: August 29, 2024

Response Made by Custodian: September 10, 2024

GRC Complaint Received: October 7, 2024

Background

April 29, 2025 Council Meeting:

At its April 29, 2025 public meeting, the 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, found that:

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The current custodian of record is Rayna E. Harris.

1. The Custodian failed to comply with the Council’s January 28, 2025 Interim Order because she failed to respond to it.
2. “The complainant shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s January 28, 2025 Interim Order, which required the Custodian to respond to the subject OPRA request, is enforceable in the Superior Court if the Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the Custodian’s legal obligation to respond to the subject OPRA request has already been determined by the Council and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian failed to timely respond to the subject OPRA request within the extended deadline. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). The Custodian also may have unlawfully denied access to any existent records; this issue was not cured because the Custodian failed to submit an Statement of Information and did not formally respond to the Council’s January 28, 2025 Interim Order. As such, the Custodian’s inaction hindered the GRC’s 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). Accordingly, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
4. At present, the Complainant is not entitled to reasonable attorney’s fees pursuant to OPRA because the courts have determined that the State’s fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, and not a *pro se* filer representing himself without legal representation. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2005-71 (April 2006). However, should the Complainant retain legal representation during the continued pendency of this complaint, the Office of Administrative Law should review whether the Complainant is entitled to, and the quantum of (if applicable), a fee award based on that representation.

Procedural History:

On May 1, 2025, the Council distributed its Interim Order to all parties. On May 15, 2025, the current Custodian sent a letter to the Government Records Council (“GRC”), copying the Complainant, addressing the subject OPRA request. Therein, the current Custodian attached records responsive to OPRA request item Nos. 1 and 4 and stated that no records responsive to any other items existed.

Additional Submissions:

On May 19, 2025, the Complainant e-mailed the GRC requesting that this complaint be dismissed considering recent “meaningful” corrective actions the Township has taken to improve their OPRA process and that he is not represented by an attorney. On the same day, the GRC responded, confirming receipt of the Complainant’s request to dismiss the complaint and advised that it would proceed to final adjudication.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss this complaint based on the Complainant’s written request to do so on May 19, 2025. Thus, no further adjudication is required.

Prepared By: Frank F. Caruso
Executive Director

June 17, 2025



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

April 29, 2025 Government Records Council Meeting

John Paff
Complainant

GRC Complaint No. 2024-234

v.

Township of Hillside (Union)
Custodian of Record

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:

1. The Custodian failed to comply with the Council’s January 28, 2025 Interim Order because she failed to respond to it.
2. “The complainant shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s January 28, 2025 Interim Order, which required the Custodian to respond to the subject OPRA request, is enforceable in the Superior Court if the Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the Custodian’s legal obligation to respond to the subject OPRA request has already been determined by the Council and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian failed to timely respond to the subject OPRA request within the extended deadline. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). The Custodian also may have unlawfully denied access to any existent records; this issue was not cured because the Custodian failed to submit an Statement of Information and did not formally respond to the Council’s January 28, 2025 Interim Order. As such, the Custodian’s inaction hindered the GRC’s 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). Accordingly, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

4. At present, the Complainant is not entitled to reasonable attorney's fees pursuant to OPRA because the courts have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, and not a *pro se* filer representing himself without legal representation. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2005-71 (April 2006). However, should the Complainant retain legal representation during the continued pendency of this complaint, the Office of Administrative Law should review whether the Complainant is entitled to, and the quantum of (if applicable), a fee award based on that representation.

Interim Order 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 1, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**John Paff¹
Complainant**

GRC Complaint No. 2024-234

v.

**Township of Hillside (Union)²
Custodial Agency**

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

1. The “name, title, position, and length of service” for all individuals serving as the current Township of Hillside (“Township”) municipal public defender.
2. If more than one (1) public defender exists, the name of the individual with the title “Chief Municipal Public Defender.”
3. A copy of the contract between each of the public defenders and the Township.
4. A record detailing the compensation method for each public defender if not included in the contracts sought in item No. 3 above.
5. If the salary is a fixed annual amount by ordinance or resolution, a copy thereof.
6. The most recent annual report as required by Township Code § 4-35.5 showing number of defendants assigned to the public defender, the number of defendants charged a fee, and the total fee amount.

Custodian of Record: Brook L. Nieves

Request Received by Custodian: August 29, 2024

Response Made by Custodian: September 10, 2024

GRC Complaint Received: October 7, 2024

Background

January 28, 2025 Council Meeting:

At its January 28, 2025 public meeting, the 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, found that:

1. 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

¹ No legal representation listed on record.

² No legal representation listed on record.

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 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 within the first (1st) extended time frame 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. The Custodian may have unlawfully denied to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, for each OPRA request item, the Custodian shall: 1) locate and disclose the responsive records; 2) provide a specific lawful basis for denying access to the record identified as responsive to the item; or 3) certify if no records responsive to a specific item exist.
4. **The Custodian shall comply with conclusion No. 3 above within ten (10) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Procedural History:

On January 30, 2025, the Council distributed its Interim Order to all parties. To date, the GRC has not received a formal response⁶ to the Order.

Analysis

Compliance

At its January 28, 2025 meeting, the Council ordered the Custodian to disclose responsive records, provide a specific lawful basis for denying access to any records, or certify is no records responsive to a specific OPRA request item exist. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On January 30, 2025, the Council distributed its Interim Order to all parties, providing the Custodian ten (10) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on February 13, 2025.

To date, the Custodian has not complied with the Council's Order. Further, the Custodian has not submitted certified confirmation of compliance to the Executive Director.

Therefore, the Custodian failed to comply with the Council's January 28, 2025 Interim Order because she failed to respond to it.

Council's January 28, 2025, Interim Order is Enforceable

"The complainant shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's January 28, 2025 Interim Order, which required the Custodian to respond to the subject OPRA request, is enforceable in the Superior Court if the Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law ("OAL") for the limited purposes described below, the Council emphasizes that the issue as to the Custodian's legal obligation to respond to the subject OPRA request has already been determined by the Council and thus is not an outstanding issue before the OAL.

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

⁶ On March 31, 2025, the Complainant e-mailed the GRC alerting it to a March 24, 2025 e-mail the Custodian sent to him contained what appeared to be an uncertified attempt to comply with the Council's Order. The Complainant asked the GRC to not accept the submission because it was deficient. On April 1, 2025, the Custodian resent her e-mail to the Complainant copying the GRC. Said transmission has not been considered because it was well beyond the compliance time frame set forth in the Council's Order and does not include the required certified confirmation of compliance, an explicit Order requirement for proper compliance.

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)).

Here, the Custodian failed to timely respond to the subject OPRA request within the extended deadline. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). The Custodian also may have unlawfully denied access to any existent records; this issue was not cured because the Custodian failed to submit an SOI and did not formally respond to the Council’s January 28, 2025 Interim Order. As such, the Custodian’s inaction hindered the GRC’s 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). Accordingly, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness. Therefore, this complaint should be referred to the OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prevailing Party Attorney’s Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . . . A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a “prevailing party” if he achieves the desired result because the complaint

brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the Court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

The more complicated aspect of this issue is whether a complainant would qualify for reasonable attorney's fees. According to the New Jersey Supreme Court, the New Jersey Legislature has promulgated a "substantial number of statutes authorizing an award of a reasonable counsel fee *to the attorney for the prevailing party.*" New Jerseyans For A Death Penalty Moratorium v. N.J. Dep't of Corr. and Devon Brown, 182 N.J. 628 (2005) (quoting Rendine v. Pantzer, 141 N.J. 292 (1995)) (emphasis added). Although the underlying purpose of those statutes may vary, they share a common rationale for incorporating a fee-shifting measure: to ensure "that plaintiffs with bona fide claims are able to find lawyers to represent them[,] . . . to attract competent counsel in cases involving statutory rights, . . . and to ensure justice for all citizens." Id. at 152-53 (quoting Coleman v. Fiore Bros., 113 N.J. 594, 598 (1989)). Thus, the courts of the State have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, not an attorney who is the plaintiff representing himself.

OPRA provides that a person who is denied access to a government record may either file a proceeding in Superior Court or file action with the GRC. N.J.S.A. 47:1A-6. Further, it is generally true that *pro se* litigants are not entitled to attorney's fees; this position has been uniformly applied to OPRA's fee shifting provision. See Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019). In Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2005-71 (April 2006), the Council denied the complainant's request for attorney's fees because he was a *pro se* litigant representing himself. In reaching this conclusion, the Council reasoned that "[t]he courts of the state have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff not the plaintiff representing himself." Id.

Here, the Complainant asked the Council to consider him a "prevailing party." While the Complainant did include in his relief request a direct ask for attorney's fees associated therewith, the "prevailing party" statement brings with it the connotation of a fee award. Based on this, the GRC is compelled to address this issue on the merits.

The Complainant presently has not identified legal representation and the GRC has not received a formal letter of representation identifying same. Upon review and application of Pitts, GRC 2005-71, the Complainant is not eligible for attorney's fees at this time. Specifically, the Complainant cannot be a prevailing party entitled to a fee award because there is no evidence that he has been hired legal representation but is instead a *pro se* litigant. However, the GRC notes that should the Complainant obtain an attorney during the OAL phase of this complaint, the prevailing party issue may become relevant again.

Therefore, at present, the Complainant is not entitled to reasonable attorney's fees pursuant to OPRA because the courts have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, and not a *pro se* filer representing himself without legal representation. See Pitts, GRC 2005-71. However, should the Complainant retain legal representation during the continued pendency of this complaint, the OAL should review

whether the Complainant is entitled to, and the quantum of (if applicable), a fee award based on that representation.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's January 28, 2025 Interim Order because she failed to respond to it.
2. "The complainant shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's January 28, 2025 Interim Order, which required the Custodian to respond to the subject OPRA request, is enforceable in the Superior Court if the Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the Custodian's legal obligation to respond to the subject OPRA request has already been determined by the Council and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian failed to timely respond to the subject OPRA request within the extended deadline. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). The Custodian also may have unlawfully denied access to any existent records; this issue was not cured because the Custodian failed to submit an Statement of Information and did not formally respond to the Council's January 28, 2025 Interim Order. As such, the Custodian's inaction hindered the GRC's 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). Accordingly, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
4. At present, the Complainant is not entitled to reasonable attorney's fees pursuant to OPRA because the courts have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, and not a *pro se* filer representing himself without legal representation. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2005-71 (April 2006). However, should the Complainant retain legal representation during the continued pendency of this complaint, the Office of Administrative Law should review whether the Complainant is entitled to, and the quantum of (if applicable), a fee award based on that representation.

Prepared By: Frank F. Caruso
Executive Director

April 15, 2025



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
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Commissioner

INTERIM ORDER

January 28, 2025 Government Records Council Meeting

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Complaint No. 2024-234

v.

Township of Hillside (Union)
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 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).
2. 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 within the first (1st) extended time frame 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. The Custodian may have unlawfully denied to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, for each OPRA request item, the Custodian shall 1) locate and disclose the responsive records; 2) provide a specific lawful basis for denying access to the record identified as responsive to the item; or 3) certify if no records responsive to a specific item exist.
4. **The Custodian shall comply with conclusion No. 3 above within ten (10) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 28th 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

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**John Paff¹
Complainant**

GRC Complaint No. 2024-234

v.

**Township of Hillside (Union)²
Custodial Agency**

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

1. The “name, title, position, and length of service” for all individuals serving as the current Township of Hillside (“Township”) municipal public defender.
2. If more than one (1) public defender exists, the name of the individual with the title “Chief Municipal Public Defender.”
3. A copy of the contract between each of the public defenders and the Township.
4. A record detailing the compensation method for each public defender if not included in the contracts sought in item No. 3 above.
5. If the salary is a fixed annual amount by ordinance or resolution, a copy thereof.
6. The most recent annual report as required by Township Code § 4-35.5 showing number of defendants assigned to the public defender, the number of defendants charged a fee, and the total fee amount.

Custodian of Record: Brook L. Nieves

Request Received by Custodian: August 29, 2024

Response Made by Custodian: September 10, 2024

GRC Complaint Received: October 7, 2024

Background³

Request and Response:

On August 29, 2024, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 10, 2024, the Custodian responded in writing obtaining an extension of time to respond until September 19, 2024, based on the nature of the OPRA request.

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.

On September 20, 2024, the Complainant e-mailed the Custodian advising that he had yet to receive a final response to his OPRA request. On September 24, 2024, the Custodian responded apologizing for the delay and noting that the OPRA request was accidentally sent to the wrong Township department. The Custodian again extended the time to respond through October 3, 2024.

Denial of Access Complaint:

On October 7, 2024, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s failure to respond within her self-imposed October 3, 2024 deadline resulted in a “deemed” denial of access. The Complainant requested that the GRC order the Custodian: 1) to disclose records responsive to this OPRA request; 2) to certify if no records exist; or 3) to provide a specific lawful basis by which any records should not be disclosed. The Complainant also asked the GRC to consider him a “prevailing party.”

Statement of Information:

On October 10, 2024, the GRC sent the Custodian a request to file the Statement of Information (“SOI”) for both complaints. On October 31, 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).

On November 7, 2024, the Custodian e-mailed the GRC seeking an extension of time to submit the requested SOI to ensure the Township could provide the most comprehensive and accurate response. On November 8, 2024, the GRC responded noting that it would typically contemplate an extension commensurate with the original submission time. The GRC noted that the Township, however, already received seventeen (17) business days to submit an SOI. The GRC thus allowed for an extension to November 14, 2024, to submit the requested SOI.

On November 14, 2024, Township attorney Gracia R. Montilus e-mailed a “draft response” to the GRC. On November 15, 2024, the Custodian submitted a signed copy of the “draft response”⁴ to the GRC. On November 18, 2024, the Complainant sent a letter to the GRC arguing, among other things, the “draft response” should not be accepted because it constituted an incomplete SOI. On November 21, 2024, the GRC returned the submission as an incomplete SOI and provided a final submission date of November 26, 2024, noting that no further extensions would be forthcoming.⁵

⁴ The “draft response” appeared to be a reformatted version of the SOI form omitting several parts thereof and a heavily modified version of the certification contained on page 7.

⁵ The GRC also advised that Mr. Montilus had not filed a formal letter of representation as required by N.J.A.C. 5:105-1.3 and 2.2(a). The GRC noted that absent such a filing, the service list would not be updated, and it would only communicate with the Custodian. To date, the GRC has not received the required letter of representation.

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 October 10, 2024, 2024. On October 31, 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. Thereafter, the Custodian sought and received an extension of time to submit the SOI through November 14, 2024: the signed "draft response" the GRC received on November 15, 2024 was not a complete SOI. Based on these facts, the GRC returned same and set a final deadline of November 26, 2024 to submit a complete 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).

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).⁶ 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).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a "deemed" denial of access to the records.

[Id.]

In this matter, the Complainant here submitted his OPRA request on August 29, 2024. The Custodian responded on September 10, 2024, extending the response time frame through September 19, 2024. The Custodian subsequently responded on September 24, 2024, three (3) business days after the expiration of the extended deadline, again extending the response time through October 3, 2024. This complaint followed on October 7, 2024, where the Complainant argued that the Custodian's failure to respond by October 3, 2024 resulted in a "deemed" denial of access. The facts support the occurrence of a "deemed" denial; however, said denial actually occurred on September 20, 2024, after the Custodian failed to adhere to the first (1st) extended time frame. Thus, at the time of the September 24, 2024 response, the subject OPRA request was already "deemed" denied.

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

⁶ 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.

clarification or requesting an extension of time within the first (1st) extended time frame 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, GRC 2007-11. See also Kohn, GRC 2007-124.

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.

Here, the Complainant’s OPRA request sought specific personnel information, contracts, ordinances/resolutions, and annual statistical information related to the Township’s public defenders. After not receiving a timely response or the records sought, the Complainant filed this complaint asking the GRC to order the Custodian to either disclose the records, certify if none exist, or provide a specific lawful basis for any denials. Unfortunately, the Custodian did not submit a completed SOI even after being given multiple opportunities to do so.

Upon review, the GRC finds that the Complainant’s OPRA request sought disclosable personnel information⁷ and certain records with no apparent applicable exemptions. Further, Township Code § 4-35, *et seq.* provides support for the potential existence of all records to be maintained by the Township. Specifically, § 4-35.1 gives the Council authority to appoint a public defender and set the pay standard (“per-session or per-annum”). Thus, basic personnel information and official Township Council appointment records, whether ordinances, resolutions, or contracts, covering OPRA request item Nos. 1 through 5 likely exist either in part or in whole. Further, § 4-35.5 requires the Municipal Court Clerk to “annually report to the Mayor and Council” the statistics identified by the Complainant in OPRA request item No. 6. This would suggest that if the Court is providing the Township with a specific report, memo, or other correspondence on a yearly basis containing this information it would be disclosable.

Accordingly, the Custodian may have unlawfully denied to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, for each OPRA request item, the Custodian shall 1) locate and disclose the responsive records; 2) provide a specific lawful basis for denying access to the record identified as responsive to the item; or 3) certify if no records responsive to a specific item exist.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

⁷ In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a government record under N.J.S.A. 47:1A-10, and that the complainant’s March 25, 2009, request for seeking that information was a valid request pursuant to OPRA. Id. at 5.

Prevailing Party Attorney's Fees

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. 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).
2. 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 within the first (1st) extended time frame 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. The Custodian may have unlawfully denied to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, for each OPRA request item, the Custodian shall 1) locate and disclose the responsive records; 2) provide a specific lawful basis for denying access to the record identified as responsive to the item; or 3) certify if no records responsive to a specific item exist.
4. **The Custodian shall comply with conclusion No. 3 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁸ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁹ to the Executive Director.¹⁰**

⁸ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹⁰ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Executive Director

January 21, 2025