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JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

May 20, 2025 Government Records Council Meeting

Gerard J. Toto, Jr.
Complainant

Complaint No. 2024-254

v.

North Stelton Volunteer Fire Company (Middlesex)
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council (“Council”) considered the May 13, 2025, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

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(a). 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 his burden of proof that he 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 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 dated October 31, 2007).
3. The Custodian may have unlawfully denied access to the Complainant’s OPRA request seeking the North Stelton Fire Company’s bylaws. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose same to the Complainant. If the Custodian determines that no records exist or are withheld from access pursuant to an OPRA exemption, he must certify to this fact.
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

Interim Order Rendered by the
Government Records Council
On The 20th Day of May 2025

John A. Alexy, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: May 22, 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
May 20, 2025 Council Meeting**

**Gerard J. Toto, Jr.¹
Complainant**

GRC Complaint No. 2024-254

v.

**North Stelton Volunteer Fire Company (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “a copy of the current North Stelton Volunteer Fire Company Bylaws.”

Custodian of Record: John Scarpa
Request Received by Custodian: October 11, 2024
Response Made by Custodian: N/A
GRC Complaint Received: November 21, 2024

Background³

Request:

On October 11, 2024, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records via certified mail.

Denial of Access Complaint:

On November 21, 2024, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he never received a response from the Custodian after seven (7) business days. The Complainant also stated that he believed the Custodian should be John Scarpa, the President of the North Stelton Volunteer Fire Company (“Fire Company”).

Statement of Information:

On February 25, 2025, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. On April 2, 2025, the GRC sent a “No Defense” letter to the Custodian,

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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requesting a completed SOI within three (3) business days of receipt. The GRC noted 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). The GRC did not receive any correspondence from the Custodian.

Analysis

Failure to Submit SOI

OPRA also provides that "Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]" N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff 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(f).]

Finally, OPRA provides that "[a] custodian's failure to submit a completed and signed SOI . . . may result in the Council's issuing a decision in favor 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. 5:1052.4(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 Custodian did not comply with the GRC's initial request for an SOI. On April 2, 2025, well after the expiration of the ten (10) business day deadline, the GRC transmitted a "No Defense" letter to the Custodian providing him 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 or any communication 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(a). 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).

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).⁴ 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 the instant matter, the Complainant submitted his OPRA request on October 11, 2024, via certified mail. The Complainant contended he never received a response from the Custodian. Therefore, with no evidence that the Custodian responded to the Complainant within the statutory period, a "deemed" denial of the subject OPRA request occurred.

Therefore, the Custodian did not bear his burden of proof that he 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 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, GRC 2007-11.

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 Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-196 (Interim Order dated April 29, 2014), the complainant requested the bylaws of a volunteer fire company. The Council held that because a fire company was a member of a fire district, it was considered a "public agency" for purposes of OPRA. Id. (citing Paff v. NJ State Firemen's Ass'n, 431 N.J. Super. 278 (App. Div. 2013)). The Council's decision was subsequently appealed and upon affirmation of said decision, the Supreme Court of New Jersey granted certification to hear the complaint. The Court subsequently affirmed the GRC's decision in part and modified in part, holding that the Fire District, which received the OPRA request, was required to obtain the records from the fire company, even if the fire company itself was not a "public agency." Verry v. Franklin Fire Dist. No. 1 (Somerset), 230 N.J. 285 (2017). In its discussion, the Court also included in a footnote that a volunteer fire company contracting directly with a municipality would be

⁴ 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.

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considered subject to OPRA. This footnote prompted a trial court judge in Lamb v. Lavallette Volunteer Fire Co., Docket No. OCN-L-2984-16 to hold that the Lavallette Volunteer Fire Company was a “public agency” for purposes of OPRA.

Here, the Complainant requested the by-laws for the Fire Company. With no response from the Custodian and the failure to provide an SOI, the relationship the Fire Company has with the Township of Piscataway is left unknown. Nevertheless, the Verry Court ordered disclosure of the fire company’s bylaws, thus making them disclosable under OPRA.

Accordingly, the Custodian may have unlawfully denied access to the Complainant’s OPRA request seeking the Fire Company’s bylaws. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose same to the Complainant. If the Custodian determines that no records exist or are withheld from access pursuant to an OPRA exemption, he must certify to this fact.

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(a). 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 his burden of proof that he 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 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 dated October 31, 2007).
3. The Custodian may have unlawfully denied access to the Complainant’s OPRA request seeking the North Stelton Fire Company’s bylaws. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose same to the Complainant. If the Custodian determines that no records exist or are withheld from access pursuant to an OPRA exemption, he must certify to this fact.
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 deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷

Prepared By: Samuel A. Rosado
Senior Staff Attorney

May 13, 2025

⁵ 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.

⁶ "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."

⁷ 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.

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