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DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

December 9, 2025 Government Records Council Meeting

Elizabeth Strochak
Complainant

Complaint No. 2024-35

v.

Alexandria Township Board of Education
(Hunterdon)
Custodian of Record

At the December 9, 2025, public meeting, the Government Records Council (“Council”) considered the December 2, 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 unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Burlett v. Monmouth Cnty. Bd. of Freeholders, GRC Complaint No. 2004-75 (August 2004); Miller v. Westwood Reg’l Sch. Dist. (Bergen), GRC Complaint No. 2009-49 (February 2010). However, the GRC declines to order any further action because Custodian’s Counsel disclosed the responsive recording to the Complainant on February 7, 2024, and again on March 9, 2024.
2. The Custodian unlawfully denied access to the requested recording through Mr. DelMonte. N.J.S.A. 47:1A-6. However, shortly after the Complainant caused this complaint to the GRC, Custodian’s Counsel reversed course based on the Alexandria Township Board of Education’s by-laws and disclosed the recording to the Complainant. 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 9th Day of December 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: December 11, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 9, 2025 Council Meeting**

**Elizabeth Strochak¹
Complainant**

GRC Complaint No. 2024-35

v.

**Alexandria Township Board of Education (Hunterdon)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of the recording of the January 18, 2024 public Alexandria Township Board of Education (“BOE”) meeting.³

Custodian of Record: Michael McGarry

Request Received by Custodian: January 24, 2024

Response Made by Custodian: February 1, 2024; February 7, 2024

GRC Complaint Received: February 8, 2024

Background⁴

Request and Response:

On January 24, 2024, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned record. On February 1, 2024, Jonathan G. DelMonte, Esq. responded in writing on behalf of the Custodian denying access to the subject record and citing Atlantic City Convention Ctr. Auth. v. S. Jersey Publ. Co., 135 N.J. 53 (1994). On February 1, 2024, the Complainant disputed the denial of access noting that she was seeking the recording for the public portion of the January 18, 2024 meeting and not the executive session. The Complainant asserted that the requested recording was disclosable under OPRA and expressed her intent to file a complaint.

On February 7, 2024, Custodian’s Counsel e-mailed the Complainant stating that upon further review of the BOE’s by-laws, it was determined that the subject recording was disclosable. Custodian’s Counsel e-mailed the Complainant separately, disclosing the responsive recording.

¹ No legal representation listed on record.

² Represented by Philip E. Stern, Esq. of DiFrancesco Bateman Kunzman Davis Lehrer & Flaum, P.C. (Warren, NJ).

³ The Complainant sought additional records that are not at issue here.

⁴ 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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Denial of Access Complaint:

On February 8, 2024,⁵ the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the BOE’s denial and reliance on Atl. City, 135 N.J. 53, in support of said denial. The Complainant asserted that Atl. City was specific to “recorded minutes from closed executive sessions and when there were ‘personnel’ issues discussed.” The Complainant argued that Atl. City did not apply to her request because she was seeking recordings of a public meeting rather than “executive sessions recordings.” The Complainant further asserted the requested record was not exempt from disclosure under OPRA.

The Complainant asserted that the Custodian may have knowingly and willfully denied her request “to avoid an ethics complaint” due to Open Public Meetings Act violations. The Complainant asserted that the Board has not released any recordings since May 2022.

Supplemental Responses:

On March 8, 2024, the Complainant e-mailed Custodian’s Counsel advising that she was unable to access “part 2” of the disclosed recording. The Complainant asked Custodian’s Counsel to resend that part of the recording as soon as possible. On March 9, 2024, Custodian’s Counsel acknowledged the Complainant’s communication and stated he was “on it.” Shortly thereafter, the Complainant e-mailed Custodian’s Counsel advising that she received the recording the prior night.

Statement of Information:

On March 27, 2024, the Custodian filed a Statement of Information (“SOI”).⁶ The Custodian certified that he received the Complainant’s OPRA request on January 24, 2024, attaching Custodian Counsel’s legal certification. The Custodian certified that Mr. DelMonte denied the subject OPRA request on February 1, 2024. See Stern Cert., ¶ 5.

The Custodian stated the Board initially believed that the subject recording was used “only as a memory aid for the Board Secretary in drafting Board minutes.” The Custodian certified that, upon further review, it was determined that the subject recording was a “government record” disclosable under OPRA, and Custodian’s Counsel advised the Complainant of this finding on February 7, 2024. Stern Cert. ¶ 6. The Custodian certified that, on February 7, 2024, Counsel e-mailed the requested recording to the Complainant. Id. ¶ 7. The Custodian further certified that after curing technical issues, the Complainant confirmed receipt of the recording on [March] 9, 2024.⁷ Id. ¶¶ 7, 8. The Custodian asserted that despite being aware that the subject record was being disclosed the Complainant “frivolously filed the Denial of Access Complaint and refused to rescind the Complaint despite knowing she had access to the record in question.”

⁵ The Complainant verified her complaint on February 7, 2024, prior to Custodian Counsel’s offer of disclosure.

⁶ Custodian’s Counsel executed the SOI, and not the Custodian as required by N.J.A.C. 5:105-2.4(a). The GRC subsequently contacted the BOE to correct the signature issue. On August 20, 2025, the GRC received the requisite certification executed by the current custodian of record, Michael McGarry.

⁷ Custodian Counsel’s certification identifies this date as “February 9, 2024.” However, the exhibit identified in ¶¶ 7 and 8 is dated March 9, 2024.

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Analysis

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.

Regarding meeting recordings, in Burlett v. Monmouth Cnty. Bd. of Freeholders, GRC Complaint No. 2004-75 (August 2004) and Miller v. Westwood Reg’l Sch. Dist. (Bergen), GRC Complaint No. 2009-49 (February 2010), the Council held that audio recordings of public session meetings are disclosable because they represent a verbatim account of the meeting, regardless of whether minutes had been approved for accuracy and content.

Here, the Complainant’s OPRA request sought the meeting recording of the January 18, 2024 BOE public meeting. In response, the BOE denied this request stating that the recording was “not discoverable under OPRA . . . [as they] were used to help prepare the official records or used as a memory aid.” However, precedential OPRA case law does not support such a denial. Instead, in accordance with Burlett, the Custodian was required to disclose those verbatim recordings regardless of their anticipated intended use.

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Burlett, GRC 2004-75; Miller, GRC 2009-49. However, the GRC declines to order any further action because Custodian’s Counsel disclosed the responsive recording to the Complainant on February 7, 2024, and again on March 9, 2024.

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)); and 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)).

In the matter before the Council, the Custodian unlawfully denied access to the requested recording through Mr. DelMonte. N.J.S.A. 47:1A-6. However, shortly after the Complainant caused this complaint to the GRC, Custodian's Counsel reversed course based on the BOE's by-laws and disclosed the recording to the Complainant. 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 unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Burlett v. Monmouth Cnty. Bd. of Freeholders, GRC Complaint No. 2004-75 (August 2004); Miller v. Westwood Reg'l Sch. Dist. (Bergen), GRC Complaint No. 2009-49 (February 2010). However, the GRC declines to order any further action because Custodian's Counsel disclosed the responsive recording to the Complainant on February 7, 2024, and again on March 9, 2024.
2. The Custodian unlawfully denied access to the requested recording through Mr. DelMonte. N.J.S.A. 47:1A-6. However, shortly after the Complainant caused this complaint to the GRC, Custodian's Counsel reversed course based on the Alexandria Township Board of Education's by-laws and disclosed the recording to the Complainant. 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

December 2, 2025