



State of New Jersey

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MIKIE SHERRILL
Governor

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Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 31, 2026 Government Records Council Meeting

Brian R. Wittig
Complainant

Complaint No. 2024-71

v.

Rockaway Township (Morris)
Custodian of Record

At the March 31, 2026, public meeting, the Government Records Council ("Council") considered the March 24, 2026, 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 Custodian lawfully denied access to the requested record as advisory, consultative, and deliberative material. N.J.S.A. 47:1A-6. Specifically, the evidence of record reveals that the Complainant sought a draft mayoral budget proposal, which is exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; In re Liquidation of Integrity Ins. Co., 165 N.J. 75, (2000); Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018).

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 31st Day of March 2026

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: April 2, 2026



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 31, 2026 Council Meeting**

**Brian R. Wittig¹
Complainant**

GRC Complaint No. 2024-71

v.

**Rockaway Township (Morris)²
Custodial Agency**

Records Relevant to Complaint: Copy via e-mail of the mayor’s official municipal budget request submitted to the Council between January 1, 2024, and February 27, 2024, as statutorily required by Rockaway Township Administrative Code 2-3.1; N.J.S.A. 40:69A-40; N.J.S.A. 40:4-1; N.J.S.A. 40:4-5.1; and NJ FLN 2023-22.

Custodian of Record: Adele Wadleigh³

Request Received by Custodian: March 13, 2024

Response Made by Custodian: March 19, 2024

GRC Complaint Received: March 21, 2024

Background⁴

Request and Response:

On March 13, 2024, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 19, 2024, the fourth (4th) business day following receipt of said OPRA request, the Custodian responded in writing informing the Complainant that the OPRA request was denied because draft documents are not subject to disclosure.

Denial of Access Complaint:

On March 21, 2024, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that a public meeting was held on March 3, 2024, at which the mayor submitted the budget to the Rockaway Township (“Township”) Council. The Complainant stated that he subsequently submitted his OPRA request

¹ No legal representation listed on record.

² Represented by Ursula H. Leo, Esq., of Laddey Clark & Ryan, LLP (Sparta, NJ).

³ Everett Falt was the original Custodian.

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.

to the Custodian on March 13, 2024, and the Custodian responded by denying access to the requested records on March 19, 2024.

The Complainant stated that “[t]he Mayor’s budget request is, by definition, a public record, and not a ‘draft’ or ‘work product’. (sic)” The Complainant, citing Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274 (2009), stated that the requested record consists of numbers on a spreadsheet, and argued that the requested record is not exempt from access because it is not deliberative and does not otherwise fall under N.J.S.A. 47:1A-1.1.

Statement of Information:

On April 23, 2024, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on March 13, 2024. The Custodian certified that the record responsive to the OPRA request is the mayor’s budget proposal, which is a draft document generated before the adoption of the Township’s budget decision. The Custodian certified that he denied the record pursuant to N.J.S.A. 47:1A-1.1, which provides that inter- and intra-agency documents that include advisory, consultative, and deliberative material are not government records and thus not subject to disclosure. The Custodian certified that a record which contains or involves factual components is entitled to deliberative process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process. The Custodian noted that in Educ. Law Ctr., 198 N.J. 274, a case cited by the Complainant, the court stated, “**pre-decisional documents do not lose their protection from unwarranted public scrutiny merely because they may contain numerical or statistical data or information** used in the development of, or deliberation on, a possible governmental course of action . . .” Id. (emphasis added by Custodian). The Custodian cited Ciesla v. N.J. Dep’t of Health & Senior Servs., 429 N.J. Super. 127 (App. Div. 2012), noting the court’s holding that the deliberative process privilege bars the “disclosure of proposed policies before they have been fully vetted and adopted by a government agency[.]” Id. at 137-38.

The Custodian certified that Section 2-3.1.1 of the Township Code includes within the powers and duties of the mayor the submission of a preliminary expense budget, which does not alter the deliberative nature of the document, particularly where the Code notes the budget should include justification or reason for each line-item expenditure. The Custodian certified that the reference to New Jersey law that requires adoption of a budget and the Local Finance Notice that provides budget deadlines do not change the deliberative nature of the requested documents.

The Custodian cited the holding in Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83, 92 (App. Div. 2018), that “the inherent nature of a draft document as both advisory and requiring deliberation prior to approval, compels the conclusion that draft minutes are ‘advisory, consultative, deliberative material,’ and are not subject to disclosure under OPRA as a government record.” (citing N.J.S.A. 47:1A-1.1). The Custodian certified that draft budgets are similar to draft meeting minutes in that both are pre-decisional.

The Custodian certified that the requested record was a draft generated before the adoption of the Township budget decision and reflects the mayor’s recommendations and deliberations. As such, the Custodian certified that the OPRA request was properly denied.

Additional Submissions:

On April 29, 2024, the Complainant submitted a response to the SOI. The Complainant argued four points, those being that the Custodian:

1. Failed to acknowledge that the Township consists of separate branches of government that take official action separately.
2. Mischaracterized the mayor's official budget request as a draft and pre-decisional.
3. Erroneously compared the mayor's official budget request to draft Council meeting minutes.
4. Failed to correctly apply both prongs of the Supreme Court's decision relied upon by the Custodian to exempt the requested record.

In his first point, the Complainant argued that the Township operates under a mayor-council form of government, governed under separate provisions of Title 40. The Complainant argued that the two branches have separate roles and responsibilities and take separate official actions.

In his second point, the Complainant argued that “[t]he Mayor’s official budget request is, by definition, neither a draft nor pre-decisional.” The Complainant argued that the Custodian mischaracterized the budget request in an attempt to “shoehorn it into the language of [the] claimed OPRA exemption.” The Complainant further stated that N.J.S.A. 40:69A-40(e) provides that, “**the Mayor shall** [p]repare and submit to the council for its consideration and adoption an annual operating budget and a capital budget” (emphasis added by Complainant).

In his third point, the Complainant argued that the drafting, review, and approval of meeting minutes is the sole statutory obligation of the council. The Complainant asserted that the mayor has no statutory obligation regarding the drafting, review, or approval of council meeting minutes.

Finally, the Complainant argued that in Educ. Law Ctr., 198 N.J. 274, the court held that for a record to be considered draft or pre-decisional, two prongs must both be met: “*first*, on whether the information sought is a part of the process leading to formulation of an agency’s decision . . . *and, second*, on the material’s ability to reflect or to expose the deliberative aspects of that process” (emphasis added by Complainant). The Complainant asserted that the Custodian failed to meet the first prong because the mayor’s budget request is not pre-decisional for the reasons the Complainant set forth in his first three (3) points.

With respect to the second prong, the Complainant asserted that the court in Educ. Law Ctr., 198 N.J. 274, stated that a record which contains factual components is subject to the deliberative process when it was used in the decision-making process and its disclosure would reveal the nature of the deliberations that occurred. The Complainant argued that the Custodian failed to prove that disclosure of the requested record would reveal the nature of the deliberations that occurred.

The Complainant asserted that N.J.S.A. 40:69A-46 states, in relevant part, “Council may reduce any item or items in the mayor’s budget by a vote of a majority of the council, but an

increase in any item or items therein shall become effective only upon an affirmative vote of two-thirds of the members of council.” The Complainant stated that “[a]ll official budget actions and related discussions . . . **may only** take place during official Council meetings[.]” The Complainant stated that a three (3) hour public meeting was held on March 2, 2024, which was dedicated to budget discussions. The Complainant stated that during the meeting, “in-depth budget discussions [took] place . . . between the Council and Mayor.” The Complainant stated that public input was stifled because the requested record was withheld from them; however, public access to the record would not have exposed the “deliberative thought-process” because the budget discussions were conducted in an open public meeting. For this reason, the Complainant concluded that the second prong was also not met.

On May 2, 2024, the Custodian’s Counsel submitted a sur-reply addressing each of the Complainant’s four points set forth in his reply to the SOI. First, the Custodian’s Counsel asserted that whether a municipality has separate branches of government is not relevant to the question of whether an OPRA exception is applicable. Counsel stated that the Township followed the provisions of N.J.S.A. 40A:4-4 in introducing, advertising, and holding a hearing on the budget prior to adoption.

As to the Complainant’s second point, the Counsel stated that Rockaway Township Code Section 2-3.1 provides that the mayor shall be required to submit to the Township Council a preliminary expense budget for the coming year by the 15th of January. Counsel stated that the purpose of the preliminary budget is to highlight the areas in which expenditures will be increased or decreased, and as such the mayor’s budget, as submitted to the council, shall contain three (3) prior years for actual and budgeted expenditures, justification for each line item expenditure, and such other information as required by the rules and regulations, including the mayor’s suggested budget. Counsel stated that OPRA specifically excludes production of “inter-agency or intra-agency advisory, consultative or deliberative material” pursuant to N.J.S.A. 47:1A-1.1. Counsel, citing Ciesla v. N.J. Dep’t of Health & Senior Servs., 29 N.J. Super. 127, 137-38 (App. Div. 2012) and In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 83 (2000), argued that the deliberative process privilege allows the withholding of documents upon which decisions and policies are formulated. Counsel concluded that, “[t]he ‘preliminary’ budget from the Mayor, which must include justifications, was therefore properly withheld.”

Regarding the Complainant’s third point, the Counsel stated that the Custodian’s reference to draft minutes was an analogy and that both the mayor’s budget and draft minutes are exempt advisory, consultative or deliberative material.

Counsel stated that the Complainant asserted in his final point that the Custodian failed to apply both prongs of the standard correctly as set forth in prevailing case law. Counsel stated that the mayor’s “preliminary expense budget” includes deliberative material considered by the governing body and then becomes part of the official budget and budget discussion open to the public. Counsel stated that “[t]he preliminary budget information requested is an example of a document that reflects the Mayor’s recommendations and deliberations, and is part of a process by which the Township Council decisions are formulated.” As such the document, “was a draft generated before the adoption of the Township’s budget decision, and thus constitutes deliberative material.”

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.

OPRA excludes from the definition of a government record “inter-agency or intra-agency advisory, consultative or deliberative material.” N.J.S.A. 47:1A-1.1. It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the “deliberative process privilege.”

The deliberative process privilege is a doctrine that permits government agencies to withhold documents that reflect advisory opinions, recommendations and deliberations submitted as part of a process by which governmental decisions and policies are formulated. NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975). Specifically, the New Jersey Supreme Court has ruled that a record that contains or involves factual components is entitled to deliberative-process protection under the exemption in OPRA when it was used in the decision-making process *and* its disclosure would reveal deliberations that occurred during that process. Educ. Law Ctr. v. NJ Dep’t of Educ., 198 N.J. 274 (2009).

The deliberative process privilege was discussed at length in In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 88 (2000). There, the Court addressed the question of whether the Commissioner of Insurance, acting in the capacity of liquidator of a regulated entity, could protect certain records from disclosure which she claimed contained opinions, recommendations or advice regarding agency policy. Id. at 81. The Court adopted a qualified deliberative process privilege based upon the holding of McClain v. Coll. Hosp., 99 N.J. 346 (1985). Integrity, 165 N.J. at 88. In doing so, the Court noted that:

A document must meet two requirements for the deliberative process privilege to apply. First, it must have been generated before the adoption of an agency's policy or decision. In other words, it must be pre-decisional. . . . Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies. . . . Purely factual material that does not reflect deliberative processes is not protected. . . . Once the government demonstrates that the subject materials meet those threshold requirements, the privilege comes into play. In such circumstances, the government's interest in candor is the “preponderating policy” and, prior to considering specific questions of application, the balance is said to have been struck in favor of non-disclosure.

[Id. at 84-85 (citations omitted).]

The Court further set out procedural guidelines based upon those discussed in McClain:

The initial burden falls on the state agency to show that the documents it seeks to shield are pre-decisional and deliberative in nature (containing opinions, recommendations, or advice about agency policies). Once the deliberative nature of the documents is established, there is a presumption against disclosure. The burden then falls on the party seeking discovery to show that his or her compelling or substantial need for the materials overrides the government's interest in non-disclosure. Among the considerations are the importance of the evidence to the movant, its availability from other sources, and the effect of disclosure on frank and independent discussion of contemplated government policies.

[Integrity, 165 N.J. at 88 (citing McClain, 99 N.J. at 361-62).]

More recently, in Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018), the Appellate Division discussed the deliberative process privilege regarding a request for draft meeting minutes, stating:

The applicability of the deliberative process privilege is government by a two-prong test. The judge must determine both that a document is (1) “pre-decisional,” meaning it was “generated before the adoption of an agency’s police or decision;” and (2) deliberative, in that it “contain[s] opinions, recommendations, or advice about agency policies.” [Educ. Law Ctr. v. Dep’t of Educ., 198 N.J. at 276 (quoting In Re: Liquidation of Integrity Ins. Co., 165 N.J. 75, 84-85 (2000))]. If a document satisfies both prongs, it is exempt from disclosure under OPRA pursuant to the deliberative process privilege.

[Id. at 90-91.]

Regarding the first prong, the court stated that “a draft is not a final document. It has been prepared for another person or persons’ editing and eventual approval.” Id. at 90. Therefore, the court held that by their very nature, draft meeting minutes are pre-decisional since they are subject to revision and not yet approved for public release. Id. at 90-91.

Regarding the second prong, the court held that “the document must be shown to be closely related to the ‘the formulation or exercise of . . . policy-oriented judgment or [to] the process by which policy is formulated.’” Ciesla v. N.J. Dep’t of Health & Sr. Servs., 429 N.J. Super. 127, 138 (App. Div. 2012) (quoting McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 619-20 (App. Div. 2010)). Id. at 91. The court found that the requested draft minutes, as compiled by the writer in attendance at the meeting, were subject to additions, suggestions, and other edits from the members of the public body. Id. Thus, the draft minutes satisfied the second prong of the test. Id. at 92.

Here, the Complainant’s OPRA request sought a copy of the mayor’s 2024 municipal budget request. The Custodian certified that the document reflects the mayor’s deliberations and recommendations and was submitted to the Township’s council prior to the adoption of the Township’s budget. The Custodian denied access because the Complainant’s request sought a draft document intended for the Township council’s consideration prior to adoption of the annual

budget. The Complainant argued that the Custodian mischaracterized the requested record as a draft and pre-decisional document and failed to correctly apply both prongs of the court’s decision relied upon by the Custodian to exempt the record.

Applying the relevant case law to the issue before the Council, the GRC is satisfied that the Custodian lawfully denied access to the mayor’s 2024 budget request as a draft document because it meets the two-prong test articulated in In re Liquidation of Integrity, 165 N.J. 75. First, the budget request was prepared by the mayor for consideration by the Township council prior to adoption of the budget, and as such, it is a pre-decisional draft document. See Libertarians for Transparent Gov’t, 453 N.J. Super. at 90-91. Next, the requested record contains mayoral budget recommendations subject to consideration and input from the Township’s council prior to eventual adoption of the budget. The Township’s satisfaction of both prongs of the two-prong test was, or should have been, understood by the Complainant because he stated in his reply to the SOI that statutory law provides “the Mayor shall [p]repare and submit to the council for its consideration and adoption an annual operating budget and a capital budget.” Moreover, while the Custodian has established the deliberative nature of the requested documents, the Complainant has not demonstrated a compelling or substantial need for the materials considering the resulting presumption against disclosure. See In re Liquidation of Integrity, 165 N.J. at 88.

Accordingly, the Custodian lawfully denied access to the requested record as advisory, consultative, and deliberative material. N.J.S.A. 47:1A-6. Specifically, the evidence of record reveals that the Complainant sought a draft mayoral budget proposal, which is exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; In re Liquidation of Integrity, 165 N.J. 75 (2000); Libertarians for Transparent Gov’t, 453 N.J. Super. 83.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the requested record as advisory, consultative, and deliberative material. N.J.S.A. 47:1A-6. Specifically, the evidence of record reveals that the Complainant sought a draft mayoral budget proposal, which is exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; In re Liquidation of Integrity Ins. Co., 165 N.J. 75, (2000); Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83 (App. Div. 2018).

Prepared By: John E. Stewart

March 24, 2026