



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

March 25, 2025 Government Records Council Meeting

Richard Rivera
Complainant

Complaint No. 2025-26

v.

City of Trenton (Mercer)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 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 Government Records Council, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond obstructed the Government Records Council 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 October 31, 2007). The Government Records Council will not address the extension timeliness violation because the subject OPRA request was already “deemed” denied as of January 21, 2025.
3. The Custodian unlawfully denied access to the Complainant’s OPRA request under O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). N.J.S.A. 47:1A-6. Accordingly, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific lawful basis for denying access to any of the responsive records; or 3) certify if no responsive records to the subject OPRA request 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.

Interim Order Rendered by the
Government Records Council
On The 25th Day of March 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: March 27, 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
March 25, 2025 Council Meeting**

**Richard Rivera¹
Complainant**

GRC Complaint No. 2025-26

v.

**City of Trenton (Mercer)²
Custodial Agency**

Records Relevant to Complaint: Copies of all use of force (“UFR”) reports for the City of Trenton Police Department (“TPD”) for 2018.

Custodian of Record: Brandon Garcia

Request Received by Custodian: January 9, 2025

Response Made by Custodian: January 21, 2025

GRC Complaint Received: January 27, 2025

Background³

Request and Response:

On January 8, 2025, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 21, 2025, the eighth (8th) business day after receipt of the subject OPRA request, the Custodian responded in writing extending the response time frame for an additional seven (7) business days.

Denial of Access Complaint:

On January 27, 2025, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian did not respond to his OPRA request within the statutorily mandated time frame. The Complainant further stated that the Custodian sought an extension of time to respond to the subject OPRA request without his conference and after the expiration of the statutorily mandated time frame.

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.

Statement of Information:

On February 10, 2025, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. On February 27, 2025, the GRC sent a “No Defense” letter to the Custodian requesting a completed SOI within three (3) business days of receipt. The GRC noted that the Custodian’s failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f).

Analysis

Failure to Submit SOI

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

The New Jersey Administrative Code provides:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than 10 business days from the date of receipt of the SOI form from the Council's staff. Custodians must sign the SOI . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

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

In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a). See 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 February 10, 2025. On February 27, 2025, after the expiration of the ten (10) business day deadline, the GRC sent the Custodian a “No Defense” letter providing him an additional three (3) business days to submit the requested SOI. To date, the GRC has not received a completed SOI, or other response, from the Custodian.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond 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). 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 matter before the Council, the Complainant submitted his OPRA request on January 8, 2025, and received an automated confirmation of receipt on January 9, 2025. On January 21, 2025, the eighth (8th) business day after receipt of the subject OPRA request, the Custodian responded in writing extending the response time frame for an additional seven (7) business days. Based on this, the subject OPRA request was considered "deemed" denied.

Based on the foregoing, the GRC finds that 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 requests pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. The GRC will not address the extension timeliness violation because the subject OPRA request was already "deemed" denied as of January 21, 2025.

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 the instant matter, the Complainant's OPRA request sought copies of UFR reports for TPD for 2018. There is evidence in the record to show that the Custodian received the Complainant's OPRA request but did not disclose any responsive records. Further, the Custodian failed to submit an SOI explaining why the requested records were not disclosed. The record is void of any evidence to show that the requested records are exempt and not subject to disclosure. Further, longstanding precedential case law requires disclosure of UFR reports under OPRA, potentially with limited redactions. See O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Rivera v. Office of the Cnty. Prosecutor, 2012 N.J. Super. Unpub. LEXIS 1921 (August 8, 2012). For these reasons, the GRC finds that the Custodian unlawfully denied access to the requested records.

Accordingly, the Custodian unlawfully denied access to the Complainant's OPRA request under O'Shea, 2012 N.J. Super. Unpub. LEXIS 1921. N.J.S.A. 47:1A-6. Accordingly, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific lawful basis for denying access to any of the responsive records; or 3) certify if no responsive records to the subject OPRA request 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.

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 Government Records Council, despite more than one request, is a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian's failure to respond obstructed the Government Records Council 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 October 31, 2007). The Government Records Council will not address the extension timeliness violation because the subject OPRA request was already "deemed" denied as of January 21, 2025.
3. The Custodian unlawfully denied access to the Complainant's OPRA request under O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). N.J.S.A. 47:1A-6. Accordingly, the Custodian shall: 1) search for and disclose responsive records located; 2) provide a specific lawful basis for denying access to any of the responsive records; or 3) certify if no responsive records to the subject OPRA request 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 deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶

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.

Prepared By: Jennifer C. Howell
Staff Attorney

March 18, 2025

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⁵ "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."

⁶ 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.