



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

February 24, 2026 Government Records Council Meeting

Alfred Tard-El
Complainant

Complaint No. 2025-377

v.

City of Trenton (Mercer)
Custodian of Record

At the February 24, 2026, public meeting, the Government Records Council (“Council”) considered the February 17, 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:

1. The Custodian’s failure to submit 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 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). Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014). 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).
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. N.J.S.A. 47:1A-6. Thus, the Custodian shall: 1) search for and disclose responsive records located to the Complainant; 2) provide a specific lawful basis for denying access to any of the responsive records including supporting documentation; 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.
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 24th Day of February 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: February 26, 2026

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
February 24, 2026 Council Meeting**

**Alfred Tard-El¹
Complainant**

GRC Complaint No. 2025-377

v.

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

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

1. Records concerning the Secondary Effects Doctrine for adult-oriented businesses (“AOBs”):
 - a. All studies, reports, analyses, findings, and other documentary evidence, including public hearing transcripts and meeting minutes, that were used to justify the enactment or amendment of zoning ordinances regulating the location of AOBs.
 - b. All records, data, or internal communications relied upon by the City of Trenton (the “City”) to document the existence of adverse secondary effects—such as increases in crime or decreases in property values—that were alleged to result from AOBs.
2. Records concerning commercially viable properties for AOBs:
 - a. All records, including maps, surveys, reports, or planning documents, identifying and analyzing the parcels within the City where an AOB is a permitted use under the zoning ordinance.
 - b. Any studies or documents created by or for the City evaluating the commercial viability of these designated AOB parcels, including factors such as site access, infrastructure, size and legal availability.
 - c. All records concerning the City’s determination that its AOB zoning ordinance leaves open ‘reasonable alternative avenues of communication’ and provides a genuine opportunity for AOBs to operate within the commercial marketplace.

Custodian of Record: Brandon Garcia

Request Received by Custodian: October 24, 2025

Response Made by Custodian: Unknown.

GRC Complaint Received: December 9, 2025

¹ No legal representation listed on record.

² No legal representation listed on record.

Background³

Request:

On October 24, 2025, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On December 9, 2025, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied this request and that the City of Trenton (the “City”) sought several extensions to avoid complying with OPRA. The Complainant stated that the requested records were vital to exercising constitutional rights and ensuring governmental transparency.

The Complainant requested that the GRC: 1) find that the Custodian and City acted in bad faith by using extensions improperly; 2) conduct an *in camera* review on requested records and require disclosure accordingly; and 3) determine that the Custodian knowingly and willfully violated OPRA and is subject to the civil penalty; and 4) determine that he is a prevailing party entitled to reasonable attorney’s fees and costs incurred.⁴

Statement of Information:

On January 5, 2026, the GRC sent the Custodian a request to file the Statement of Information (“SOI”). On January 29, 2026, 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(g). The GRC has not received an SOI from the Custodian to date.

Analysis

Failure to Submit SOI

OPRA 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 also provides that:

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.

⁴ The Complainant also noted that he intended to file a separate court action challenging the constitutionality of the City’s zoning ordinances on adult-oriented businesses.

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(g).]

Furthermore, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council 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. 5:105-2.4(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 January 5, 2026. On January 29, 2026, 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. The GRC has not received an SOI from the Custodian.

Accordingly, the Custodian’s failure to submit 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 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). Alterman, Esq., GRC 2013-353. See also Kovacs, GRC 2014-196; Howell, GRC 2015-249.

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).⁵ 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

⁵ 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.

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).

Here, the Complainant submitted his OPRA request on October 23, 2025, and subsequently filed this complaint indicating the Custodian failed to respond to it after several extensions. In his Denial of Access Complaint, the Complainant provided a copy of his OPRA request dated-stamped as received by the City on October 24, 2025. However, the Complainant did not include any responses from the Custodian showing extensions. As the Custodian failed to submit a completed SOI, there is no evidence of record to support that the Custodian ever responded in writing to the OPRA request in a timely manner. Thus, the evidence of record clearly supports that a "deemed" denial of access 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 the instant matter, the Complainant stated that the Custodian's extensions "granted by the GRC" led to the Custodian "unlawfully stonewalling" the OPRA request at issue. Because the record is devoid of evidence regarding a Custodian's response, and the Custodian did not submit an SOI, there is no explanation regarding any unlawful denial of access. For these reasons, the GRC finds that the Custodian may have unlawfully denied access to the remainder of the requested records.

Accordingly, the Custodian may have unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall: 1) search for and disclose responsive records located to the Complainant; 2) provide a specific lawful basis for denying access to any of the responsive records including supporting documentation; 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.

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 submit 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 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). Alterman, Esq. v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2013-353 (September 2014). 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).
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).
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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: Maria M. Rossi
Staff Attorney

February 17, 2026

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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