



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

January 27, 2026 Government Records Council Meeting

Steve Clegg
Complainant

Complaint No. 2025-38

v.

City of Trenton (Mercer)
Custodian of Record

At the January 27, 2026, public meeting, the Government Records Council (“Council”) considered the January 20, 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 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 portion of the Complainant’s OPRA request seeking a copy of the Board of Health meeting held on August 1, 2024. 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

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 27th Day of January 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: January 29, 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
January 27, 2026 Council Meeting**

**Steve Clegg¹
Complainant**

GRC Complaint No. 2025-38

v.

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

Records Relevant to Complaint: Electronic copy of the recording of the Board of Health [“BOH”] meeting held on August 1, 2024.

Custodian of Record: Brandon Garcia
Request Received by Custodian: December 20, 2024
Response Made by Custodian: January 3, 2025
GRC Complaint Received: February 11, 2025

Background³

Request and Response:

On December 20, 2024, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 3, 2025, the eighth (8th) business day after receipt of the OPRA request, the Custodian responded in writing extending the response time frame for seven (7) business days. On January 14, 2025, January 24, 2025, and February 4, 2025, the Custodian responded in writing, each time extending the time frame for an additional seven (7) business days. On February 11, 2025, the Custodian denied the request stating that there are no records responsive to the request.

Denial of Access Complaint:

On February 11, 2025, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted an OPRA request on December 20, 2024, and the Custodian responded on January 3, 2025, and extended the response time frame by seven (7) business days. The Complainant stated that on January 14, 2025, January 24, 2025, and February 4, 2025, the Custodian continued to extend the time frame by seven (7) business days. The Complainant stated that on February 11, 2025, 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.

Steve Clegg v. City of Trenton (Mercer), 2025-38 – Findings and Recommendations of the Executive Director

responded denying the OPRA request claiming no responsive records existed. The Complainant asserted that he attended the BOH meeting and knows that the meeting was recorded. The Complainant stated that he located another OPRA request on the City of Trenton’s (“City”) OPRA request system for the same record that had been fulfilled. The Complainant stated that the OPRA request was submitted on August 2, 2024, and the Custodian disclosed the recording on August 13, 2024.

The Complainant contended that the Custodian violated OPRA by delaying a response for “more than 5 weeks” and did not provide a reasonable justification for denying access. The Complainant contended that the Custodian “falsely claimed” that no records existed when he had proof that the recording did exist.

Statement of Information:

On February 25, 2025, the GRC sent a request to file the Statement of Information (“SOI”) to the Custodian. The GRC did not receive a response to this request. On April 25, 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(g). The GRC has not received an SOI to date.

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 25, 2025, to which the Custodian did not reply. On April 25, 2025, the GRC sent the Custodian a “No

Defense” letter providing an additional three (3) business days to the submit the requested SOI. The GRC never received an SOI from the Custodian.

Accordingly, the Custodian’s failure to provide an SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(g). 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).

As a result of the Custodian’s failure to submit an SOI, pursuant to N.J.A.C. 5:105-2.4(g) the GRC addresses this complaint based solely on the completed submissions presently before it. N.J.S.A. 47:1A-5(i).

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 dated October 31, 2007).

In this matter, the Complainant disputed the reasonableness of the Custodian’s extensions. In the absence of an SOI, there is no evidence supporting the extensions. However, the evidence of record does support that the Custodian committed a “deemed denial” by responding the Complainant on the eighth (8th) business day following the receipt of the complaint. Thus, the evidence of record supports that the Custodian’s initial response was beyond the statutorily mandated time frame and thus 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.

Additionally, the GRC notes that it does not reach the extension issue because the Complainant’s OPRA request was already considered “deemed” denied at the time that the Custodian responded thereto on January 3, 2025.

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.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). However, should competent, credible evidence to refute a legal certification exist, the Council held that a custodian violated OPRA. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). In Welenc v. N.J. State Police, GRC Complaint No. 2017-134 (Interim Order dated February 26, 2019). Where the aforementioned fact pattern exists, the Council relied on Carter and Welenc in determining that an unlawful denial of access may have occurred therein. The Council reasoned that although the Custodian certified that the New Jersey State Police (“NJSP”) did not maintain pension information on five (5) officers, he disclosed pension information for one of them. The Council was also persuaded by this disclosure to order the custodian to perform additional searches to ensure that the NJSP did not maintain any of the information sought.

In the instant matter, the GRC must make an adjudication based solely on the Complainant’s submission. The Custodian responded that no records existed. While such a response typically results in a finding similar to Pusterhofer, GRC 2005-49, the Complainant has shown that the record did exist at some point and provided supporting documentation showing that it was disclosed to a different OPRA requestor in August 2024. Because the Custodian did not submit an SOI, he has not certified that the record does not exist. There is also no evidence regarding the City’s retention period to determine whether the recording may have been deleted. Thus, and unlike Pusterhofer, the evidence of record supports that the responsive record exists and should have been disclosed.

Accordingly, the Custodian may have unlawfully denied access to Complainant’s OPRA request seeking a recording of the BOH meeting held on August 1, 2024. 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.

Knowing & Willful

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 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 portion of the Complainant's OPRA request seeking a copy of the Board of Health meeting held on August 1, 2024. 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**
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: Brenda B. Alves
Staff Attorney

January 20, 2026

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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