



State of New Jersey

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Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

March 31, 2026 Government Records Council Meeting

Alfred Tard-El
Complainant

Complaint No. 2025-429

v.

City of Trenton (Mercer)
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:

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.

Interim Order 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

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 31, 2026 Council Meeting**

**Alfred Tard-El¹
Complainant**

GRC Complaint No. 2025-429

v.

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

Records Relevant to Complaint: Electronic copies via e-mail and copies via U.S. mail of:

1. Public officials' surety bond information: "copy of the current surety bond and associated financial statement for the following public official(s): Brandon Garcia, Municipal Clerk, Ed Leon, Zoning officer, TT and all other members of the Municipal Governing Body for the Zoning Board of Adjustment."
2. Zoning Appeals Application: "Copy of the standard, current Zoning Board of Adjustment appeal application form packet and associated submission checklist as available to the public."
3. Fee Schedule for Constitutional Challenges: "Copy of the current municipal fee schedule detailing all fees applicable to a zoning appeal, specifically highlighted or confirming the fees associated with filing an appeal that includes a constitutional challenge (facial or as-applied)"
4. Resolution Applicable to Facial Challenges: "Any resolution or ordinance adopted by the governing body specifically detailing the municipal process, requirements, or response procedures for an application or appeal involving a constitutional 'facial as-applied' challenge to a zoning ordinance (or lack thereof) regulating sexually oriented businesses."

Custodian of Record: Brandon Garcia

Request Received by Custodian: December 8, 2025

Response Made by Custodian: Unknown.

GRC Complaint Received: December 31, 2025

Background³

Request:

On December 8, 2025, the Complainant submitted an Open Public Records Act ("OPRA")

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.

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request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On December 31, 2025, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not provide any argument or support why he believed he was unlawfully denied access other than the statement “non-responsive” on page 4 of the complaint form.

Response:

On December 31, 2025, approximately the fifteenth (15th) business day after receipt of the OPRA request, the Custodian purportedly responded in writing disclosing certain records. On an unknown date, the Complainant e-mailed the Custodian contending that the disclosed records, a “Development Application Packet” and “Trenton LDO,” were not responsive to his OPRA request. The Complainant contended that the Custodian responded in “bad faith” and in violation of N.J.S.A. 47:1A-5(g). The Complainant noted that a complaint was already pending before the GRC and without a satisfactory response he would ask that civil penalties be levied on the Custodian.

Amended Denial of Access Complaint:

On January 6, 2026, the Complainant filed an Amended Denial of Access Complaint with the GRC. The Complainant asserted that the amendment was necessary to provide evidence of the Custodian’s “deemed” denial occurring on December 18, 2025. The Complainant asserted that, after taking multiple extensions on other related records request, the Custodian issued a response claiming the request was “fulfilled.” The Complainant stated, however, that the Custodian provided only a general land development ordinance and an application packet, which are wholly unresponsive to portions of his request.

The Complainant stated that the Custodian’s failure to provide these discrete, identifiable records – while providing voluminous, unrelated documents – constituted an unlawful denial of access and demonstrates bad faith. The Complainant also contended that the Custodian failed to provide a formal, signed certification for the denial of these specific items as required by N.J.S.A. 47:1A-5(g).⁴ The Complainant requested that the Council determine that the Custodian knowingly and willfully violated OPRA and impose the appropriate civil penalties allowed for in N.J.S.A. 47:1A-11.

Statement of Information:

On January 6, 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

⁴ The GRC notes that N.J.S.A. 47:1A-5(g), or any other provision in OPRA, does not contain any language requiring a custodian to include an executed legal certification as part of their response to an OPRA request. Alfred Tard-El v. City of Trenton (Mercer), 2025-429 – Findings and Recommendations of the Executive Director

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:

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 6, 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 him 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. To date, 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). See also Alterman, Esq., GRC 2013-353; 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 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 December 8, 2025, and subsequently filed this complaint without advancing a clear argument. The Complainant subsequently submitted an Amended Denial of Access Complaint asserting that, on December 31, 2025, "after multiple extensions" he received a response that included non-responsive records. However, the Complainant did not include any responses from the Custodian with either complaint filing. As the Custodian failed to submit a completed SOI, there is no evidence of record to support that the Custodian actually responded to the OPRA request in writing. However, even if the Complainant included the purported December 31, 2025 response, it would have fallen outside the statutory response time frame. Thus, the evidence of record 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's Amended Denial of Access Complaint asserts that the Custodian eventually responded to his OPRA request but failed to provide responsive records to the satisfaction of the Complainant. However, the record is devoid of evidence regarding the Custodian's response and as he did not submit an SOI. As such, there is no explanation regarding

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.

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.

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).
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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸

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: Maria M. Rossi
Staff Attorney

March 24, 2026

⁶ 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.

⁷ "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."

⁸ 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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