



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

January 27, 2026 Government Records Council Meeting

James Butler
Complainant

Complaint No. 2025-85

v.

Borough of Caldwell (Essex)
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 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).
2. The Custodian did not bear her burden of proof that she 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. Notwithstanding the “deemed” denial, the portion of the Complainant’s OPRA request item Nos. 4 and 5 seeking communications and e-mails from the Borough is invalid because it fails to include a date range. See MAG Entm’t., LLC v. Div. ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April

2010). Thus, the Custodian lawfully denied access to these portions of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

4. The Custodian may have unlawfully denied access to the Complainant's remaining OPRA request items under N.J.S.A. 47:1A-1.1. 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.
5. **The Custodian shall comply with conclusion No. 4 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**

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**

**James Butler¹
Complainant**

GRC Complaint No. 2025-85

v.

**Borough of Caldwell (Essex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: “public records related to Police Report No. 23-109531 involving [a specific individual], dated October 18, 2023 Specifically, I request:

1. The full, unredacted police report, including all officer narratives, witness statements, and any supplemental reports.
2. Additional statements, evidence, or documents submitted by [a separate individual] between October 18, 2023 and October 21, 2023.
3. The Call for Service (CAD) report, 911 call recordings and transcripts, all Body-Worn Camera (“BWC”) and dash cam footage, arrest records for [the specific individual].
4. Any email communications regarding this case between the Caldwell Police Department and Borough Council, Mayor’s Office, Essex County Prosecutor’s Office, and Borough Attorney.
5. If [the separate individual] visited the police department, I request visitor sign-in logs, surveillance footage, and any internal police communications confirming her presence. If any notifications referrals, or reports were sent to DCPD (Child Protective Services), I request those as well.”

Custodian of Record: Brittany Heun
Request Received by Custodian: March 11, 2025
Response Made by Custodian: None.
GRC Complaint Received: April 15, 2025

¹ No legal representation listed on record.

² Represented by Robert K. Devaney, Esq., of Florio Perrucci Steinhardt Cappelli & Tipton, LLC (Cherry Hill, NJ), however, the GRC notes no formal letter of representation has been received.

Background³

Request and Response:

On March 10, 2025, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 11, 2025, the Custodian e-mailed the Complainant confirming receipt of the OPRA request and informing him that the OPRA request was sent to the proper department for review. On March 21, 2025, the Complainant e-mailed the Custodian inquiring about the status of his OPRA request as the seven (7) business day-time period to respond had lapsed. On March 26, 2025, the Complainant e-mailed the Custodian again inquiring about the status of his OPRA request as he had not received a response to his previous inquiry. On the same date, Captain Matthew DeAngelo of the Caldwell Police Department responded in writing, stating that he attempted to contact the Complainant via telephone and voicemail on March 21, 2025, to request a good contact number to facilitate a call. The Complainant replied to Captain DeAngelo requesting that any communications regarding the instant OPRA request be made in writing via e-mail. The Complainant requested a status update on his OPRA request and offered to provide additional information if necessary to assist in fulfilling his OPRA request.

Denial of Access Complaint:

On April 15, 2025, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that, despite his follow-up emails on March 21 and March 26, 2025, the Custodian failed to respond to his OPRA request within the statutorily mandated seven (7) business days, which resulted in a “deemed” denial of access. The Complainant argued that OPRA does not permit silence in the place of a lawful denial and that the Custodian violated OPRA by failing to provide a written denial at the very least. The Complainant maintained the records sought involve “a direct and credible threat” to his life and are necessary for him to protect his legal rights and safety.

Statement of Information:

On April 28, 2025, the GRC sent the Custodian a request to file the Statement of Information (“SOI”). On May 13, 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). On the same day, the Custodian e-mailed the GRC stating that she sent the “No Defense” letter to Counsel to review.⁴

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 On May 16, 2025, the Custodian sent a “letter of representation” including arguments apparently in lieu of the SOI to the GRC but failed to include the Complainant in the correspondence, which constitutes *ex parte* communication that cannot be considered pursuant to N.J.A.C. 5:105-2.4(b). The GRC notified the Custodian of this fact on May 19, 2025, and provided three (3) additional business days to cure the *ex parte* issue.

On May 23, 2025, the Custodian filed an SOI. Upon review of the submission, the Custodian failed to complete Item Nos. 6, 8, 10, and 11 or to provide documentation supporting any arguments set forth in the submission. On June 3, 2025, the GRC returned the submission as incomplete and sent a letter to the Custodian detailing the incomplete SOI. The GRC provided a final submission date of June 6, 2025, to submit a completed SOI. The GRC has not received a completed 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 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 April 28, 2025. On May 13, 2025, 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.

On May 23, 2025, the Custodian submitted an SOI on the proper form to the proper parties, but upon review she neither completed Item Nos. 6, 8, 10, or 11 nor provided documentation supporting any of the arguments she presented. Accordingly, the submission was returned to the Custodian as incomplete with a letter detailing the deficiencies, and the Custodian was given a final submission date of June 6, 2025. The GRC never received a completed SOI from the Custodian.

Accordingly, the Custodian’s failure to provide a completed 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.

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 March 10, 2025, and subsequently filed this complaint asserting that the Custodian failed to respond to it. In his Denial of Access complaint, the Complainant provided a March 11, 2025 e-mail response from the Custodian confirming receipt of his OPRA request as well as two (2) follow-up e-mails to the Custodian on March 21, and March 26, 2025. The Complainant asserted he did not receive any substantive response to his OPRA request or subsequent follow-up e-mails, which resulted in a “deemed” denial. As the Custodian failed to submit a completed SOI, there is no evidence of record to support that the Custodian ever responded to the OPRA request. Thus, the evidence of record clearly supports that a “deemed” denial of access occurred.

Therefore, the Custodian did not bear her burden of proof that she 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.

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information.*

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.

Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.

MAG Entm’t, LLC v. Div. ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that, “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁶ N.J. Builders Ass’n. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

An invalid OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; see also Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See, e.g., Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See, e.g., Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

With respect to requests for e-mails and correspondence, the GRC established specific criteria deemed necessary under OPRA to request such records in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. Id.: see also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters and text messages. See, e.g., Armenti

⁶ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); Alt v. City of Vineland (Cumberland), GRC 2013-205 (June 2014).

In Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010), the complainant's OPRA request sought all e-mails to or from a particular e-mail account for a specific time period. The custodian's counsel responded, advising the complainant that his OPRA request was invalid because it represented an open-ended search of the Borough's files. The Council held that the complainant's request was invalid under Elcavage, GRC 2009-07, because it did not include a subject or content. Id. at 7.

Here, a portion of the Complainant's OPRA request item No. 4 sought e-mail communications between Caldwell Police Department and a number of agencies, and a portion of request item No. 5 sought internal police communications confirming a specific individual's presence at the police department. However, as the Custodian did not submit a completed SOI, the Borough did not argue the validity of the portions of the request for communications.

Applying Elcavage, Armenti, and Verry, it is clear the evidence of record supports finding that the portions OPRA request item Nos. 4 and 5 seeking communications and e-mails were invalid. Specifically, the Complainant did not include a range of dates; thus, the Custodian's search for communications or e-mails would necessarily be open-ended. The GRC is thus satisfied that this portion of the OPRA request was invalid, as the required criteria established under controlling case law were clearly omitted from the request.

Accordingly, notwithstanding the "deemed" denial, the portion of the Complainant's OPRA request item Nos. 4 and 5 seeking communications and e-mails from the Borough is invalid because it fails to include a date range. See MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37, N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07; Armenti, GRC 2009-154; Verry, GRC 2009-124. Thus, the Custodian lawfully denied access to these portions of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

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 remainder of the Complainant's OPRA request not addressed above sought several categories of records related to Police Report No. 23-109531. There is evidence in the record to support that the Custodian received the OPRA request based on her March 11, 2025 e-mail. However, the Custodian did not substantively respond to the OPRA request or follow up e-mails from the Complainant on March 21, or March 26, 2025, after the seven (7) business days to respond had lapsed. As part of the Custodian's incomplete SOI, she argued that case in question was expunged prior to submission of the OPRA request. However, because the Custodian failed to submit a completed SOI explaining why no response was made, the assertion

regarding an expungement of the requested record carries little weight. Notwithstanding, the GRC is cognizant of the effect of expungement where records subject thereto are sought under OPRA. See, e.g., Paff v. Borough of Gibbsboro, 2013 N.J. Super. Unpub. LEXIS 1468 (App. Div. 2013); Boyle v. Princeton Borough Police Dep't (Mercer), GRC Complaint No. 2008-78 (November 2008). For these reasons, the GRC finds that the Custodian may have unlawfully denied access to the requested records but will have a final opportunity to formally and properly address the expungement issue.

Accordingly, the Custodian may have unlawfully denied access to the Complainant's remaining OPRA request items under N.J.S.A. 47:1A-1.1. 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to provide a completed 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).
2. The Custodian did not bear her burden of proof that she 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. Notwithstanding the "deemed" denial, the portion of the Complainant's OPRA request item Nos. 4 and 5 seeking communications and e-mails from the Borough is invalid because it fails to include a date range. See MAG Entm't., LLC v. Div. ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). Thus, the Custodian lawfully denied access to these portions of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

4. The Custodian may have unlawfully denied access to the Complainant's remaining OPRA request items under N.J.S.A. 47:1A-1.1. 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.
5. **The Custodian shall comply with conclusion No. 4 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 deliver⁷ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁸ to the Executive Director.⁹**

Prepared By: Maria M. Rossi
Staff Attorney

January 20, 2026¹⁰

⁷ 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.

⁸ "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."

⁹ 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.

¹⁰ This complaint was prepared for adjudication at the Council's August 26, 2025 meeting, but could not be adjudicated due to lack of quorum.