



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

FINAL DECISION

July 28, 2026 Government Records Council Meeting

Jorge Fernando Diaz Rivas
Complainant

Complaint No. 2026-69

v.

Port Authority of New York and New Jersey
Custodian of Record

At the July 28, 2026, public meeting, the Government Records Council (“Council”) considered the July 21, 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 did not bear his burden of proof that he timely responded to the Complainant’s December 11, 2025 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing within the extended time frame results in a “deemed” denial of the 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. Despite the “deemed” denial of access, the Custodian did not unlawfully deny access to the Complainant’s December 11, 2025 OPRA request seeking all records related to his arrest in question. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the evidence of record reflects, that the Port Authority provided all responsive records. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 28th Day of July 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: July 30, 2026

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 28, 2026 Council Meeting**

**Jorge Fernando Diaz Rivas¹
Complainant**

GRC Complaint No. 2026-69

v.

**Port Authority of New York and New Jersey²
Custodial Agency**

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

“Certified copies of all records related to my arrest on July 11, 2024 at 16:00 at Newark Airport, Terminal B, Level 2, Door 7, for solicitation, during which I was injured. Officers involved: Mazewska [badge number], and Munir [badge number]. Complaint number: 0714 S 2024 009638. Requested records include:

1. Destruction Log of evidence, documents, or recordings;
2. Chain of Custody;
3. video/audio recordings (security, body cams, interviews);
4. injury reports;
5. documents I signed;
6. internal notes/memos regarding evidence or document handling;
7. use-of-force/internal reviews;
8. warning/tickets;
9. internal orders/communications about evidence;
10. transportation/payments to undercover officers;
11. entrapment/inducement reports;
12. arrest/detention reports;
13. destruction/retention logs of documents I signed;
14. records affecting witness/prosecutor credibility (Brady/Giglio);
15. any other relevant evidence records.

I am requesting my own personal information pursuant to the Port Authority Access to Personal Information Policy and will provide proof of identity as directed by the Port Authority.”

Custodian of Record: William Shalewitz
Request Received by Custodian: December 11, 2025
Response Made by Custodian: December 12, 2025
GRC Complaint Received: February 12, 2026

¹ No legal representation listed on record.

² Represented by Ian Eppler, Esq., of Port Authority of New York and New Jersey (New York, NY).
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Background³

Request and Response:

On December 11, 2025, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 12, 2025, the Custodian responded in writing stating that a diligent search was underway and that the Port Authority would respond by February 6, 2026.

Denial of Access Complaint:

On February 12, 2026, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that an unlawful denial of access occurred because he did not receive a response from the Custodian on or after the agreed upon extension date of February 6, 2026.

Supplemental Response:

On February 26, 2026, the Custodian responded in writing disclosing responsive audio files and stating that no additional records were located other than records previously disclosed to the Complainant in prior requests, which he re-disclosed on that day.

Statement of Information:

On February 27, 2026, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 11, 2025. The Custodian certified that the Port Authority Freedom of Information (“FOI”) Group sent the request to several departments and asked for a diligent search for responsive records. The Custodian certified that he responded in writing to the Complainant on December 12, 2025, stating that the Port Authority needed until February 6, 2026, to search for and locate responsive records. The Custodian certified that, on February 26, 2026, he disclosed a responsive audio recording and re-disclosed several records previously provided to the Complainant in response to other OPRA requests regarding the same incident. The Custodian certified that the Port Authority disclosed all the records in its possession regarding the July 11, 2024 arrest in response to this OPRA request.

Analysis

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

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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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 Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. Then, on April 20, 2007, the custodian responded stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a "deemed" denial of access to the records.

[Id.]

In this matter, the Complainant submitted his OPRA request on December 11, 2025. The Custodian responded on December 12, 2025, the first (1st) business day after receipt of the request, informing the Complainant that an extension of time was needed until February 6, 2026, or fifty-six (56) days, to diligently search for responsive records that may exist. This complaint followed on February 12, 2026, after the Custodian failed to comply with the extended deadline. The Custodian did not respond to the Complainant until February 26, 2026, or twenty (20) days after the agreed upon deadline. Thus, as in Kohn, GRC 2007-124, the Custodian's failure to comply with the fifty-six (56) day extended deadline results in a "deemed" denial of access.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's December 11, 2025 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. See also Kohn, GRC 2007-124.

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

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.

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“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 Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. The Council held that the custodian’s certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian’s burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

In the instant matter, the Complainant’s OPRA request sought records related to his July 11, 2024 arrest and listed several records, including audio recordings of the incident. On December 12, 2025, the Custodian responded, requesting an extension until February 6, 2026, to search and produce responsive records to the Complainant. Following the filing of this complaint, the Custodian responded on February 26, 2026, disclosing multiple records to the Complainant. In the SOI, the Custodian certified that he disclosed responsive audio recordings and re-disclosed several records previously provided to the Complainant in response to his previous OPRA requests regarding the same incident. The Custodian certified that the Port Authority disclosed all the records in its possession regarding the July 11, 2024 arrest in response to this OPRA request. The Complainant did not provide any evidence to contradict the Custodian’s certification. Thus, the evidence of record shows that all responsive records were disclosed. Further, the Complainant failed to present any evidence that the Port Authority possessed additional records following the February 26, 2026 disclosure.

Accordingly, despite the “deemed” denial of access, the Custodian did not unlawfully deny access to the Complainant’s December 11, 2025 OPRA request seeking all records related to his arrest in question. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the evidence of record reflects, that the Port Authority provided all responsive records. See Danis, GRC 2009-156, *et seq.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s December 11, 2025 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing within the extended time frame results in a “deemed” denial of the 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. Despite the “deemed” denial of access, the Custodian did not unlawfully deny access to the Complainant’s December 11, 2025 OPRA request seeking all records related to his arrest in question. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the

evidence of record reflects, that the Port Authority provided all responsive records. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

Prepared By: Maria M. Rossi
Staff Attorney

July 21, 2026