



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

FINAL DECISION

June 30, 2026 Government Records Council Meeting

Amelia Nittolo
Complainant

Complaint No. 2026-91

v.

Wharton Borough Public Schools (Morris)
Custodian of Record

At the June 30, 2026, public meeting, the Government Records Council (“Council”) considered the June 23, 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 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). However, the GRC declines to order any further action because the Custodian disclosed the requested records to the Complainant on March 2, 2026.

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 30th Day of June 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 1, 2026



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2026 Council Meeting**

**Amelia Nittolo¹
Complainant**

GRC Complaint No. 2026-91

v.

**Wharton Borough Public Schools (Morris)²
Custodial Agency**

Records Relevant to Complaint:³ Electronic copies via e-mail of “bilingual waivers filed with the NJDOE for school years 2023-24, 2024-25, and 2025-26.”

Custodian of Record: Sandy Cammarata

Request Received by Custodian: February 8, 2026

Response Made by Custodian: February 18, 2026⁴

GRC Complaint Received: February 19, 2026

Background⁵

Request and Response:

On February 8, 2026, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 18, 2026, the sixth (6th) business day after receipt of the OPRA request, the Custodian for the Wharton Borough Public Schools (“District”) responded in writing disclosing records which are not the subject of this complaint; the response did not mention the bilingual waivers sought herein.

Denial of Access Complaint:

On February 19, 2026, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted she was denied access to the requested bilingual waivers for school years 2023-2024, 2024-2025, and 2025-2026. The Complainant replied to the Custodian’s February 18, 2026 response inquiring about the status of the bilingual waivers but received no response as of the filing of the instant complaint.

¹ No legal representation listed on record.

² Represented by Jeffrey R. Merlino, Esq., of Methfessel & Werbel (Edison, NJ).

³ Additional records were requested which are not the subject of this complaint.

⁴ The parties agree that the Custodian responded to the OPRA request on this date. However, neither party provided a copy of such response to the GRC.

⁵ 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.

Supplemental Response:

On February 21, 2026, the Complainant informed the Custodian that the requested bilingual waivers remained outstanding and inquired when she would receive them. The Complainant stated she did not receive a response from the Custodian prior to filing the instant complaint. On March 2, 2026, the Custodian e-mailed the Complainant, attaching a 2023 cover letter and waiver. The Custodian noted that she was forwarding the records sent to her by “Ms. Oberjinski.”

Statement of Information:

On March 19, 2026, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 8, 2026. The Custodian certified that her search included a search of the District’s IT records. The Custodian certified that she responded in writing to the Complainant’s OPRA request on February 18, 2026.⁶ The Custodian asserted that in her February 18, 2026 response, she informed the Complainant that, “after diligent search,” she discovered no annual bilingual waivers for the requested years exist and that therefore she considered the OPRA request fulfilled.

The Custodian certified that, after receiving the instant Denial of Access Complaint, she instructed the District’s IT Department to complete an additional comprehensive search of all shared files, networks, and drives. The Custodian also certified that staff members in the relevant departments were interviewed and directed to search their files for anything related to bilingual waivers for the school years in question. The Custodian certified that no responsive bilingual waivers were located as a result of the additional search.

The Custodian certified that on February 28, 2026, the Complainant informed the Custodian that it had come to her attention that an administrative assistant has a copy of the bilingual waivers in question and requested the Custodian locate same. The Custodian certified that, on March 2, 2026, the District provided the Complainant with a cover letter dated May 26, 2023, approving the 2022-2023 school year waiver, along with the indication that the 2021-2024 3-year plan must be implemented. The Custodian certified that she advised the Complainant there were no annual waivers since the District’s May 26, 2023 cover letter. The Custodian argued that disclosure of all responsive records was thus complete and that the underlying OPRA request was completely fulfilled as of March 2, 2026.

Additional Submissions:

On May 19, 2026, the GRC requested that the Custodian provide a copy of the Custodian’s purported February 18, 2026 e-mail response to the OPRA request. On May 20, 2026, Custodian’s Counsel responded in writing, attaching the bilingual waivers and approval form provided in February 2026, as well as a copy of the Custodian’s signed SOI certification. The Custodian did

⁶ The Custodian did not provide a copy of the February 18, 2026 e-mail response in the SOI or the GRC’s Request for Additional Information for same.

not provide a copy of the February 18, 2026 correspondence as requested; thus, the GRC cannot fully verify the purported date of the Custodian's response and disclosure.

Analysis

Timeliness

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. 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 the instant matter, the Complainant sought, in part, bilingual waivers for a three-year period on February 8, 2026. The Complainant and the Custodian agree that the Custodian provided a response to the OPRA request on February 18, 2026, the sixth (6th) business day following receipt of the OPRA request; however, the parties disagree whether that response included the records at issue herein. The Custodian failed to provide the GRC a copy of her February 18, 2026 response to the Complainant as part of her SOI or in response to the GRC's request for additional information. The GRC therefore cannot confirm that the Custodian issued a timely response based on the evidence contained in the record.

Thus, the Custodian failed to bear her burden of proof that she provided a response to the Complainant's February 8, 2026 OPRA request for bilingual waivers filed with the NJDOE for school years 2023-24, 2024-25, and 2025-26. 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. However, the GRC declines to order any further action because the Custodian disclosed the requested records to the Complainant on March 2, 2026.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that 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). However, the GRC declines to order any further action because the Custodian disclosed the requested records to the Complainant on March 2, 2026.

Prepared By: Maria M. Rossi
Staff Attorney

June 23, 2026