



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**January 30, 2018 Government Records Council Meeting**

Marwin McKoy  
Complainant

Complaint No. 2016-120

v.

Atlantic County Justice Facility  
Custodian of Record

At the January 30, 2018 public meeting, the Government Records Council (“Council”) considered the January 23, 2018 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 unlawfully deny access to the Complainant’s March 20, 2016 OPRA request since the evidence in the record supports her claim that she timely mailed her response to the Complainant, notwithstanding the Complainant’s claim that no response was received. N.J.S.A. 47:1A-6; Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011). Additionally, the Custodian certified that she mailed an additional response to the Complainant upon receipt of the Denial of Access Complaint.

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 30<sup>th</sup> Day of January, 2018

Robin Berg Tabakin, Esq., 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: February 2, 2018**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
January 30, 2018 Council Meeting**

**Marwin McKoy<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-120**

v.

**Atlantic County Justice Facility<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

1. “The policy, practice, or custom (as memorialized via promulgated rule) pertaining to the clothing given ‘indigent’ defendants for trial purposes.
2. The copies of all ‘writs’ issued by Atlantic County Courts for my, Marwin McKoy’s, production. Please include All writs from the date of my arrest till [sic] present. My ‘arrest’ was on August 2 2013.”

**Custodian of Record:** Jennifer Starr, Esq.

**Request Received by Custodian:** March 28, 2016

**Response Made by Custodian:** April 1, 2016; May 3, 2016

**GRC Complaint Received:** April 21, 2016

**Background<sup>3</sup>**

**Request and Response:**

On March 1, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 20, 2016, the Complainant re-submitted his OPRA request after the first request bounced back to him as a “Return to Sender.” On April 1, 2016, the fourth (4<sup>th</sup>) business day upon receipt, the Custodian responded in writing providing responsive records to the Complainant, and directing the Complainant to where he can obtain additional records that were not in the agency’s possession. However, the Complainant stated that he did not receive any response from the Custodian prior to filing this complaint.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> 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.

### Denial of Access Complaint:

On April 21, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted the same OPRA request to the Custodian on March 1, 2016. The Complainant alleged that the OPRA request was returned to him as “Return to Sender | Attempted – Not Known | Unable to Forward,” dated March 14, 2016. Additionally the Complainant claimed the request was marked in hand-written blue ink, “Government Records Request.” The Complainant included a photocopy of the envelope allegedly containing the March 1, 2016 OPRA request. The Complainant surmised that someone at the agency opened the letter, but failed to properly respond to the request contained therein.

The Complainant re-submitted his OPRA request on March 20, 2016, and claimed that he has not received a response from the Custodian. The Complainant therefore alleged that both requests were unlawfully denied.

### Statement of Information:

On May 10, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request via on March 28, 2016 from Sergeant Patrick Robinson of the Atlantic County Justice Facility (“ACJF”). Regarding the “writs,” the Custodian was informed by Sergeant Robinson that the ACJF would not have all existing writs pertaining to the Complainant, but only those issued by the New Jersey Superior Court while the Complainant was housed at ACJF. The Custodian then certified that any policies and procedures on providing clothes to inmates for trial purposes would be found within the inmate handbook, and was forwarded a copy.

The Custodian certified that on March 30, 2016, she received copies of two (2) writs pertaining to the Complainant held in possession by the ACJF., the Custodian certified that on April 1, 2016, she mailed the response to the Complainant’s OPRA request and informed the Complainant to submit a request to the Superior Court to obtain all available writs.

Shortly prior to receiving the Complainant’s Denial of Access complaint, the Custodian certified that she received a return to sender envelope with an OPRA response contained therein. The Custodian claimed that the reason for the return due to the lack of the inmate number. The Custodian contended that upon receiving the complaint, she realized that her April 1, 2016 response did not include the Complainant’s inmate number, and may have been the reason why he hadn’t received a response. The Custodian certified that she prepared a new response dated May 3, 2016.

The Custodian asserted that it was not her intention to ignore the Complainant’s OPRA request or unlawfully deny access. She contended that she responded using the address listed at the bottom of the request, which did not include the Complainant’s inmate number. She certified that once she received the complaint, she immediately sent another response to the Complainant.

## Analysis

### 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 Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the custodian certified that the record provided to the complainant was the only record responsive to the request. Id. The Council found that there had thus been no unlawful denial of access. Id. See also Kohn v. Twp. of Livingston, GRC Complaint Nos. 2009-203 & 2009-211 (January 2011) (holding the custodian did not unlawfully deny access when he certified that he provided all responsive records to complainant, and there existed no credible evidence in record to refute such certification).

In the instant matter, the Custodian received the OPRA request via e-mail on March 28, 2016 from Sergeant Robinson. Attached to the e-mail was a copy of the Complainant’s OPRA request, and on the bottom right corner it was stamped “RECEIVED” and the date of March 24, 2016 handwritten underneath. She certified that she delivered her response via regular mail on April 1, 2016, the fourth (4<sup>th</sup>) day after receipt. The evidence in the record demonstrates that the Complainant’s OPRA request did not include the Complainant’s inmate number. The GRC finds credible that the Custodian fully intended to timely respond to the Complainant’s OPRA request, and that the response did not reach the Complainant due to the lack of the inmate number in the response letter and envelope. The GRC also finds credible that the Custodian, upon recognizing the error, sent another response on May 3, 2016.

Therefore, the Custodian did not unlawfully deny access to the Complainant’s March 20, 2016 OPRA request since the evidence in the record supports her claim that she timely mailed her response to the Complainant, notwithstanding the Complainant’s claim that no response was received. N.J.S.A. 47:1A-6; Burns, 2005-68; Kohn, 2009-203 and 2009-211. Additionally, the Custodian certified that she mailed an additional response to the Complainant upon receipt of the Denial of Access Complaint.

### Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant’s March 20, 2016 OPRA request since the evidence in the record supports her claim that she timely mailed her response to the Complainant, notwithstanding the Complainant’s claim that no response was received. N.J.S.A. 47:1A-6; Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011). Additionally, the Custodian certified that she mailed an additional response to the Complainant upon receipt of the Denial of Access Complaint.

Prepared By: Samuel A. Rosado, Staff Attorney

January 23, 2018