



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**May 31, 2022 Government Records Council Meeting**

Jeffrey Goodwin  
Complainant

Complaint No. 2020-174

v.

Borough of Woodlynne (Camden)  
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council (“Council”) considered the May 24, 2022 Supplemental 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 Council dismiss the complaint because the Complainant voluntarily withdrew it in writing via e-mail to the GRC on May 2, 2022. Thus, no further adjudication is required.

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 31<sup>st</sup> Day of May 2022

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: June 2, 2022**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
May 31, 2022 Council Meeting**

**Jeffrey Goodwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-174**

v.

**Borough of Woodlynne (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of “[c]orrespondence between the Woodlynne Police and the Mayor or Council or other staff between December 26, 2019 through June 17, 2020 regarding the police patrol schedule including any concern about shortages of patrol officers.”

**Custodian of Record:** Luis Pastoriza

**Request Received by Custodian:** June 17, 2020

**Response Made by Custodian:** September 3, 2020

**GRC Complaint Received:** September 16, 2020

**Background**

**April 26, 2022 Council Meeting:**

At its April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 19, 2022 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, found that:

1. 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 October 31, 2007).
2. The Custodian’s response was insufficient because he failed to address the Complainant’s preferred method of delivery, which was via e-mail. N.J.S.A. 47:1A-

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

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

5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).

3. The Complainant's request met the requirements for a valid request for correspondence under OPRA, and the Custodian failed to bear his burden of proof that the denial of access to the requested record(s) was lawful. Therefore, the Custodian must disclose the requested correspondence to the Complainant. N.J.S.A. 47:1A-6. 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 May 24, 2011).
4. **The Custodian shall comply with paragraph #3 above within five (5) 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 deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director.**
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.

#### Procedural History:

On April 27, 2022, the Council distributed its Interim Order to all parties. On May 2, 2022, the Custodian disclosed records to the Complainant, copying the Government Records Council ("GRC"). On the same day, the Complainant e-mailed the GRC stating that he was withdrawing the complaint.

#### Analysis

No analysis required.

#### Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint because the Complainant voluntarily withdrew it in writing via e-mail to the GRC on May 2, 2022. Thus, no further adjudication is required.

Prepared By: John E. Stewart  
Staff Attorney

May 24, 2022



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**April 26, 2022 Government Records Council Meeting**

Jeffrey Goodwin  
Complainant

Complaint No. 2020-174

v.

Borough of Woodlynne (Camden)  
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 19, 2022 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 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 October 31, 2007).
2. The Custodian’s response was insufficient because he failed to address the Complainant’s preferred method of delivery, which was via e-mail. N.J.S.A. 47:1A-5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
3. The Complainant’s request met the requirements for a valid request for correspondence under OPRA, and the Custodian failed to bear his burden of proof that the denial of access to the requested record(s) was lawful. Therefore, the Custodian must disclose the requested correspondence to the Complainant. N.J.S.A. 47:1A-6. 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 May 24, 2011).
4. **The Custodian shall comply with paragraph #3 above within five (5) 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 deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

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 26<sup>th</sup> Day of April 2022

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: April 27, 2022**

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<sup>1</sup> 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.

<sup>2</sup> "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."

<sup>3</sup> 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  
April 26, 2022 Council Meeting**

**Jeffrey Goodwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-174**

**v.**

**Borough of Woodlynne (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of “[c]orrespondence between the Woodlynne Police and the Mayor or Council or other staff between December 26, 2019 through June 17, 2020 regarding the police patrol schedule including any concern about shortages of patrol officers.”

**Custodian of Record:** Luis Pastoriza  
**Request Received by Custodian:** June 17, 2020  
**Response Made by Custodian:** September 3, 2020  
**GRC Complaint Received:** September 16, 2020

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

**Request and Response:**

On June 17, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 3, 2020, the fifty-fifth (55<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing, denying the Complainant’s request by referencing N.J.S.A. 47:1A-3(a).

**Denial of Access Complaint:**

On September 16, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted his OPRA request to the Custodian on June 17, 2020. The Complainant further stated that on September 3, 2020, he received a voicemail message on his cell phone informing him the response to his request was ready. The Complainant stated that between the date he submitted his request and the date the voicemail message was left on his cell phone, the Custodian failed to acknowledge receipt of the

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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.

Complainant's request, seek an extension of time to respond, or otherwise attempt to communicate with him.

The Complainant stated that in the response the Custodian denied his request by referencing N.J.S.A. 47:1A-3(a) and informing him that there is an ongoing investigation. The Complainant stated that he is not aware of any investigation of the Borough of Woodlynne or any of its police employees. The Complainant stated that his request did not seek records regarding an investigation, but rather correspondence relating to the police patrol schedule and officer shortages. The Complainant asserted that the Custodian had approximately eleven (11) weeks to respond to his request, and that it should not have taken that much time to respond if the Custodian intended to use an on-going investigation as the reason for denial.

#### Statement of Information:

On September 29, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he was represented by legal counsel; however, no letter of representation was received by the GRC. The Custodian certified that he received the Complainant's OPRA request on June 17, 2020, and prepared a written response to the request on or before August 27, 2020. The Custodian certified that the Complainant "picked up" the response on September 3, 2020. The Custodian certified that the denied records are "CORRESPONDENCE BETWEEN MAYOR/COUNCIL AND POLICE" (emphasis in original). The Custodian certified that this matter involves a police officer in a police involved shooting that is under investigation by the local police department and the Camden County Prosecutor's Office.

The Custodian certified that he did not search for the requested records because the records are exempt from access pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3, and N.J.S.A. 47:1A-10. The Custodian certified that the requested records relate to an ongoing investigation of a police officer. The Custodian further certified, "ALSO SECURITY MEASURE (sic) AND SURVEILLANCE TECHS; IF DISCLOSED, WOULD CREATE RISK." (Emphasis in original).

### Analysis

#### Timeliness

Unless a shorter time period is otherwise provided, a custodian must 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 accordingly 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).<sup>4</sup> 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 October 31, 2007).

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<sup>4</sup> 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.

Here, the Custodian certified that he received the Complainant's OPRA request on June 17, 2020, and prepared a written response on or before August 27, 2020. The Custodian further certified that the Complainant picked up the response on September 3, 2020. Although the Complainant asked for an e-mail response, there is nothing in the evidence of record to indicate that the Custodian attempted to e-mail, or otherwise deliver the response to the Complainant prior to September 3, 2020, which was the fifty-fifth (55<sup>th</sup>) business day following the Custodian's receipt of the request.

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.

### **Insufficient Response**

The GRC previously adjudicated complaints in which a custodian did not address the preferred method of delivery. In Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014), the complainant identified his preferred method of delivery as "electronic copies on compact disc or USB drive." The custodian timely responded but did not address the complainant's preferred method of delivery. The Council, relying on its past decision in O'Shea v. Twp of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008) (stating "[a]ccording to [the] language of N.J.S.A. 47:1A-5(g), the [c]ustodian was given two ways to comply and should have, therefore, responded acknowledging the [c]omplainant's preferences with a sufficient response for each."), held that the custodian's response was insufficient. See also Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008) (holding that although the custodian timely responded granting access to the requested record, the custodian's response was insufficient because she failed to address the preferred method of delivery); Wolosky v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2009-194 (Interim Order dated August 24, 2010) (holding that the custodian's response was insufficient because he did not address the complainant's preferred method of delivery).

Here, the Complainant sought access to the responsive records via e-mail. However, the Complainant stated that on September 3, 2020, he received a voicemail message on his cell phone from the Custodian informing him the response to his request was ready. The Custodian certified that the Complainant "picked up" the response on September 3, 2020. There is nothing in the evidence of record to indicate that the Custodian attempted to e-mail the response to the Complainant. Moreover, at no point in the Custodian's response does he address the Complainant's preferred method of delivery. Therefore, consistent with the Council's decision in Delbury, GRC 2013-240, the Custodian's response was insufficient.

Accordingly, the Custodian's response was insufficient because he failed to address the Complainant's preferred method of delivery, which was via e-mail. N.J.S.A. 47:1A-5(g); Delbury, GRC 2013-240.



## 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.

OPRA also provides that:

[w]here it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA] may be denied if the inspection, copying or examination of such record or records shall be *inimical to the public interest*; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced.

[N.J.S.A. 47:1A-3(a) (emphasis added).]

Here, the Custodian certified that the requested record(s) were denied in their entirety because the records are related to an ongoing investigation pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3(a) and N.J.S.A. 47:1A-10. The Custodian did not explain in the SOI how N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10 are applicable as reasons for denying access. As such, the GRC cannot accept the Custodian’s reliance upon N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10 as reasons for denying access to the records.

With respect to N.J.S.A. 47:1A-3(a) as a reason for denying access to the requested records, the Custodian did not submit any competent, credible evidence that the records requested by the Complainant are part of any ongoing investigation(s). Moreover, the Custodian failed to certify that disclosure of the records would jeopardize the ongoing investigation(s) or were otherwise inimical to the public interest if disclosed. And because this provision of OPRA only allows denial of access if the requested records are inimical to the public interest, the Custodian cannot rely upon N.J.S.A. 47:1A-3(a) to deny access to the records.

In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council determined that for e-mails to be valid, the request must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of written correspondence See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).

In this complaint, the Complainant sought correspondence for a specific range of dates. The Complainant also specified the subject of the correspondence. The Complainant stated that the sender(s) and/or the recipient(s) are “the Woodlynne Police and the Mayor or Council or other

staff.” Although the “Woodlynne Police” and “other staff” are not specific enough for the Custodian to conduct a search, the Mayor and Council members are specifically identified by their positions within the Borough. The Complainant only needed to identify a sender or a recipient to satisfy the criteria set forth in Elcavage.

Thus, the Complainant’s request met the requirements for a valid request for correspondence under OPRA, and the Custodian failed to bear his burden of proof that the denial of access to the requested record(s) was lawful. Therefore, the Custodian must disclose the requested correspondence to the Complainant. N.J.S.A. 47:1A-6. Elcavage, GRC 2009-07; Armenti, GRC 2009-154.

### **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 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 October 31, 2007).
2. The Custodian’s response was insufficient because he failed to address the Complainant’s preferred method of delivery, which was via e-mail. N.J.S.A. 47:1A-5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
3. The Complainant’s request met the requirements for a valid request for correspondence under OPRA, and the Custodian failed to bear his burden of proof that the denial of access to the requested record(s) was lawful. Therefore, the Custodian must disclose the requested correspondence to the Complainant. N.J.S.A. 47:1A-6. 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 May 24, 2011).
4. **The Custodian shall comply with paragraph #3 above within five (5) 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 deliver<sup>5</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**

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: John E. Stewart  
Staff Attorney

April 19, 2022

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<sup>5</sup> 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.

<sup>6</sup> "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."

<sup>7</sup> 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.