



## State of New Jersey

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

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

JACQUELYN A. SUÁREZ  
*Commissioner*

### FINAL DECISION

#### August 27, 2024 Government Records Council Meeting

Scott Madlinger  
Complainant

Complaint No. 2022-149

v.

Berkeley Township (Ocean)  
Custodian of Record

At the August 27, 2024, public meeting, the Government Records Council (“Council”) considered the August 20, 2024, 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 unlawfully denied access to the Complainant’s April 8, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian sought a deposit from the Complainant as an anonymous requestor for records that she did not anticipate would cost in excess of \$5.00 to reproduce. N.J.S.A. 47:1A-5(f)

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 27<sup>th</sup> Day of August 2024

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: August 29, 2024**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 27, 2024 Council Meeting**

**Scott Madlinger<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-149**

v.

**Berkeley Township (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of “all invoices and bills received from Brian J (sic) DiStefano or his firm, all purchase orders for him or his firm, and copies of front and back of all checks to him or to his firm, relevant time period January 1, 2020 to [April 8, 2022].”<sup>3</sup>

**Custodian of Record:** Beverly M. Carle

**Request Received by Custodian:** April 8, 2022

**Response Made by Custodian:** April 19, 2022

**GRC Complaint Received:** April 20, 2022

**Background<sup>4</sup>**

**Request and Response:**

On April 8, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 19, 2022, the Custodian responded in writing to the Complainant’s request informing him that there are approximately one hundred (100) pages of records responsive to the request, of which at least forty-four (44) pages must be reduced to paper for redaction. The Custodian further informed the Complainant that the cost is five (5) cents per page pursuant to OPRA. The Custodian cited N.J.S.A. 47:1A-5(f) as providing that an agency may require a deposit or prepayment of fees when a request is voluminous, unusual or requires the use of an outside vendor. The Custodian informed the Complainant that once payment of \$2.20 is received, she would begin redacting the documents, and would require twenty-one (21) business days from receipt of payment for copying, review and redaction. The Custodian further stated that, “**OPRA permits the custodian to require a deposit or prepayment of fees for requests received from anonymous requestors. N.J.S.A. 47:1A-5(f).**” (Emphasis in original.)

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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> This request was made anonymously.

<sup>4</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 20, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that, on April 19, 2022, the Custodian responded to his April 8, 2022 OPRA request informing him that “once payment of \$2.20 is received, Township (sic) will require twenty-one (21) business days.” The Complainant stated he found unusual the Custodian’s response that pursuant to N.J.S.A. 47:1A-5(f) an agency may require a deposit or prepayment of fees when a request is voluminous. The Complainant stated that he disputes the Custodian’s statement because “N.J.S.A. 47:1A-5(f) states a deposit may be collected when an anonymous request is made and is expected to be more than \$5.00.

### Statement of Information:

On April 26, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 8, 2022, and responded on April 19, 2022, denying the request until a deposit was received from the Complainant.

The Custodian certified that, upon receipt of the request, it was forwarded to the Finance Office to access the number of pages requiring redaction. The Custodian certified that the Finance Office stated that the requested records were located in the basement, and some would require redaction of bank account and social security numbers. The Custodian certified that, because of the volume and the amount of time required to search through over two (2) years of bill lists, retrieve the responsive records, then redact and scan the records, she believed that the time and effort necessary to produce the records required prepayment of fees. The Custodian further certified, “**pursuant to N.J.S.A. 47:1A-5(f) OPRA (sic) permits the custodian to require a deposit or prepayment of fees for requests received from anonymous requestors. An agency may also require a deposit or prepayment of fees when a request is voluminous, unusual or requires the use of an outside vendor.**” (Emphasis in original.) The Custodian also certified that the Complainant has a history of requesting records and after learning the cost no longer wanting them. As examples, the Custodian cited GRC Complaint Nos. 2022-114 and 2022-115.

The Custodian certified that all records responsive to the request are ready for disclosure, awaiting payment from the Complainant. N.J.S.A. 47:1A-5(f).

### 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. OPRA further provides in relevant part, “[t]he custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of \$5 to reproduce.” N.J.S.A. 47:1A-5(f).

Here, the only allegation in the complaint is that the Complainant was denied access to the requested records because the Custodian unlawfully sought a deposit of \$2.20 to copy and redact forty-four (44) pages of responsive records. The Complainant stated that the OPRA provision cited by the Custodian for requiring him to pay a deposit, N.J.S.A. 47:1A-5(f), was misapplied by the Custodian because that provision only requires a deposit from an anonymous requestor if the requested records will cost in excess of \$5 to reproduce.

It is clear from the evidence of record that the Custodian sought a deposit of \$2.20 for copying forty-four (44) pages in order to redact information exempt from access.<sup>5</sup> As authority for requiring the deposit, the Custodian partially cited the last sentence of N.J.S.A. 47:1A-5(f), which provides: “[t]he custodian may require a deposit against costs for reproducing documents sought through an anonymous request.” However, the Custodian failed to cite the remainder of that sentence, which states: “whenever the custodian anticipates that the information thus requested will cost in excess of \$5 to reproduce.”<sup>6</sup>

Therefore, the Custodian unlawfully denied access to the Complainant’s April 8, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian sought a deposit from the Complainant as an anonymous requestor for records that she did not anticipate would cost in excess of \$5.00 to reproduce. N.J.S.A. 47:1A-5(f).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian unlawfully denied access to the Complainant’s April 8, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian sought a deposit from the Complainant as an anonymous requestor for records that she did not anticipate would cost in excess of \$5.00 to reproduce. N.J.S.A. 47:1A-5(f)

Prepared By: John E. Stewart

August 20, 2024

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<sup>5</sup> This amount is the entire cost for copying forty-four (44) letter size pages.

<sup>6</sup> The Custodian misquoted and misapplied N.J.S.A. 47:1A-5(f) several times in both the April 19, 2022 response to the request and in the SOI.