



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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ROBIN BERG TABAKIN, Chair  
COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**October 29, 2008 Government Records Council Meeting**

Patty Semprevivo  
Complainant

Complaint No.2007-135

v.

Pinelands Regional School District  
Board of Education (Burlington)  
Custodian of Record

At the October 29, 2008 public meeting, the Government Records Council ("Council") considered the October 22, 2008 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, accepts the Administrative Law Judge's Initial Decision dated July 9, 2008 because the Complainant has failed to provide any legal basis for the GRC to reject said Decision. As such, 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 29<sup>th</sup> Day of October, 2008

Robin Berg Tabakin, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.



David Fleisher, Secretary  
Government Records Council

**Decision Distribution Date: October 30, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
October 29, 2008 Council Meeting**

**Patty Semprevivo<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-135**

v.

**Pinelands Regional School District  
Board of Education (Burlington)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. All educational certificates for William Sundermann.
2. School Board meeting minute transcripts and tapes for June 2006.<sup>3</sup>

**Request Made:** March 9, 2006 and September 17, 2006

**Response Made:** None

**Custodian:** Geraldine Townsend<sup>4</sup>

**GRC Complaint Filed:** June 6, 2007

**Background**

**October 31, 2007**

Government Records Council's ("Council") Interim Order. At its October 31, 2007 public meeting, the Council considered the October 24, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council adopted the entirety of said findings and recommendations by a majority vote. The Council, therefore, found that based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the original Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

**November 15, 2007**

Council's Interim Order distributed to the parties.

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<sup>1</sup> Represented by Arthur Stein, Esq., of Stein & Supsie (Forked River, NJ).

<sup>2</sup> Represented by Paul Kalac, Esq. (Lawrenceville, NJ).

<sup>3</sup> Additional records were requested but are not relevant to the adjudication of this complaint.

<sup>4</sup> The previous Custodian, Geraldine Townsend, retired as of August 31, 2007 and was replaced by Steven Brennan.

**November 20, 2007**

Complaint transmitted to the Office of Administrative Law.

**July 9, 2008**

Administrative Law Judge's Initial Decision. The Administrative Law Judge found that:

“[a]s for the first item sought by [the Complainant] in her March 9, request, the name of the college from which Sundermann graduated, the Board's counsel correctly points out that this request did not ask for any specifically identified public record, but for a name. Whether that name was a part of some document held by the Board or not, a name is simply not a document. More importantly, it is not a ‘government record’ or ‘record’ as those terms are defined in N.J.S.A. 47:1A-1.1. Thus, while if the name were in a resume that the Board had and that resume fell within the definition of ‘government record,’ the Board could have been required to provide the resume, a request for the name is not a request that falls within OPRA.

The second part of the request was for ‘college certificates.’ There is certainly ambiguity in such a request as it is not clear on its face either precisely what it was that the requestor wanted, or thought her request would produce, or what the custodian (whose position we admittedly do not have), understood the request to want. While a request to know the college degrees held by Sundermann would have been clear enough (without getting into whether that information is a ‘public record’ as defined by OPRA), a request for ‘college certificates’ is far less understandable. In fact, the confusion was quickly cured by [the Complainant's Counsel], when, within days of the filing of [the Complainant's] request and [the Custodian's] reply, [the Complainant's Counsel] amended the request to the easily understood and recognized one for ‘professional certificates issued by the’ [Department of Education]. While the production of these certificates demonstrated some confusion due to what would appear to be a misspelling of Sundermann's name as Rundermann on one certificate, the Board did promptly reply to [the Complainant's Counsel] and provide the available certificates. There is, I **FIND**, no basis in fact or law for any conclusion that in regard to the requests for the college name or the ‘college certificates’ that [the Custodian] violated OPRA and/or acted in a willful and knowing manner to thwart a legitimate OPRA request made by [the Complainant]. Nothing about her conduct in respect to these requests approaches the level of conduct required under the case law...for proof of ‘knowing and willful’ misconduct in violation of OPRA.

As for the request of tapes, this was made in September. The Board promptly provided tapes in response. It is unclear precisely what the condition of those tapes was. Whether the tapes purporting to hold the recording of the June Board meeting were blank or garbled so badly as to

be unintelligible, it is clear both that [the Complainant] did not receive a useful tape of the meeting and that the record shows no basis for any conclusion that there was any attempt by the custodian or any representative of the Board to interfere with the provision of a proper tape to the requestor. Why the tape did not contain a good recording is not understandable from this record, but there is no evidence to support any conclusion of any misconduct or willful and knowing violation of OPRA arising from the failure to produce such a good recording. And Ms. Keller's recollection of the production and provision to [the Complainant's Counsel] of a good copy of a tape that was first unclear does not appear to relate to the June Board meeting, but is most likely related to the earlier March meeting at which [the Complainant's Counsel] appeared. Once again, despite any suspicion that may exist to what occurred, I **FIND** that the record simply fails to establish that [the Custodian] acted willingly and knowingly to violate her obligations under OPRA.

Based upon the findings stated in this decision, I **CONCLUDE** that the evidence does not satisfy the complainant's burden to establish that the Board's former custodian knowingly and willfully violated OPRA. Therefore it is **ORDERED** that the complaint be **DISMISSED**."

### **July 16, 2008**

Complainant's Exceptions to the ALJ's Initial Decision. The Complainant states that in October 2007 she resubmitted her OPRA request which is the subject of this complaint. The Complainant states that the new Business Administrator provided a certificate which looked like it had been created on a computer, contained the wrong last name and did not have any signatures at the bottom. The Complainant states that she believed said certificate was a fake. The Complainant also states that the Business Administrator informed her that the requested meeting tapes were lost and no longer available. The Complainant asserts that the Custodian has not complied with her request in a timely manner. Additionally, the Complainant asks that the GRC reject the ALJ's Initial Decision and continue its investigation of this complaint because the Complainant believes that the records were withheld from her and not provided in a timely manner.

### **July 30, 2008**

Reply Exceptions from Custodian's Counsel to GRC. Counsel states that the Complainant fails to cite to any legal authority to support her position that the GRC should reject the ALJ's Initial Decision and continue to investigate this complaint. Counsel states that the Complainant only discusses what she believes occurred regarding this matter despite the fact that a plenary hearing was held on June 18, 2008 before the ALJ in which the Complainant had the opportunity to present her evidence and convince the ALJ of the accuracy of her claims. Counsel states that the ALJ wrote a decision based upon all the evidence presented which included witnesses and nineteen (19) exhibits as evidence. Counsel contends that the Complainant's assertions are inadequate to serve as the basis for the GRC to reject the ALJ's Initial Decision and as such asks the GRC to adopt said decision.

## Analysis

The Complainant filed Exceptions to the ALJ's Initial Decision with the GRC on July 16, 2008. In said letter, the Complainant asks the GRC to reject the ALJ's decision and continue to investigate this complaint because the Complainant believes that the requested records were improperly withheld from disclosure and that the records were not provided in a timely manner. However, the Complainant fails to cite to any legal authority to support her assertion that the Initial Decision should be rejected by the GRC.

The Custodian Counsel's Exceptions state that the ALJ wrote a decision based upon all the evidence presented which included witnesses and nineteen (19) exhibits as evidence. Counsel contends that the Complainant's assertions are inadequate to serve as the basis for the GRC to reject the ALJ's Initial Decision and as such asks the GRC to adopt said decision.

The Complainant's Exceptions are not supported by the weight of the credible evidence in this matter. Moreover, the ALJ's findings of fact are entitled to deference from the GRC because they are based upon the ALJ's determination of the credibility of the parties.

"The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility." In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), *certif. denied* 121 N.J. 615 (1990). The Appellate Division affirmed this principle, underscoring that, "under existing law, the [reviewing agency] must recognize and give due weight to the ALJ's unique position and ability to make demeanor-based judgments." Whasun Lee v. Board of Education of the Township of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." Cavalieri v. Board of Trustees of Public Employees Retirement System, 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435, 442-43 (App. Div. 1984). The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor." *Id.* at 443. Additionally, the sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent's Hospital v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

Here, the ALJ fairly summarized the testimony and evidence on both sides, explaining how he weighed the proofs before him and explaining why he credited, or discredited, certain testimony. Each of the ALJ's conclusions is clearly aligned and

consistent with those credibility determinations. As such, the Council finds that it can ascertain which testimony the ALJ accepted as fact and further determines that these facts provide a reasonable basis for the ALJ's conclusions. Based on the substantial credible evidence in the record, the ALJ's characterization of the parties' testimony, as well as the other evidence adduced at the hearing, was reasonable and supported by the substantial credible evidence of record.

Therefore, because the Complainant's Exceptions are not supported by the weight of the credible evidence adduced during the hearing at the Office of Administrative Law, there is no legal basis for the GRC to reject the ALJ's Initial Decision and the Council should accept the ALJ's Initial Decision dated July 9, 2008.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council accept the Administrative Law Judge's Initial Decision dated July 9, 2008 because the Complainant has failed to provide any legal basis for the GRC to reject said Decision. As such, no further adjudication is required.

Prepared By: Dara Lownie  
Senior Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

October 22, 2008



## State of New Jersey

### GOVERNMENT RECORDS COUNCIL

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VINCENT P. MALTESE, Chairman  
ACTING COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

### INTERIM ORDER

#### October 31, 2007 Government Records Council Meeting

Patty Semprevivo

Complainant

v.

Pinelands Regional School District Board of Education

(Burlington)

Custodian of Record

Complaint No. 2007-135

At the October 31, 2007 public meeting, the Government Records Council ("Council") considered the October 24, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council adopted the entirety of said findings and recommendations by a majority vote. The Council, therefore, finds that based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the original Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 31<sup>st</sup> Day of October, 2007

Vincent Maltese, Chairman  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman  
Government Records Council

**Decision Distribution Date: November 15, 2007**





**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 31, 2007 Council Meeting**

**Patty Semprevivo<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-135**

v.

**Pinelands Regional School District Board of Education<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. All educational certificates for William Sundermann.
2. School Board meeting minute transcripts and tapes for June 2006.<sup>3</sup>

**Request Made:** March 9, 2006 & September 17, 2006

**Response Made:** None

**Custodian:** Geraldine Townsend<sup>4</sup>

**GRC Complaint Filed:** June 6, 2007

**Background**

**March 9, 2006**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests all educational certificates for William Sundermann on an official OPRA request form.

**September 17, 2006**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests school board meeting minute transcripts and tapes for June 2006 on an official OPRA request form.

**June 6, 2007**

Denial of Access Complaint filed with the Government Records Council ("GRC"). The Complainant asserts that she requested many times to receive copies of the June 2006 school board meeting minutes and tapes and all educational certificates for William Sundermann. The Complainant also asserts that most of the denials of her requests came from the Custodian, who stated that the records being sought did not pertain to the Complainant's case and there was no need for the Complainant to have such information.

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<sup>1</sup> Represented by Arthur Stein of Stein & Supsie (Forked River, NJ).

<sup>2</sup> Represented by Paul Kalac, Esq. (Lawrenceville, NJ)

<sup>3</sup> Additional records were requested but are not relevant to the adjudication of this complaint.

<sup>4</sup> The previous Custodian, Geraldine Townsend, retired as of August 31, 2007 and was replaced by Steven Brennan.

**June 12, 2007**

Offer of Mediation sent to both parties. Neither party agreed to mediate this complaint.

**June 18, 2007**

Request for the Statement of Information sent to the Custodian.

**June 21, 2007**

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated March 9, 2006
- Complainant's OPRA request dated September 17, 2006
- NJ Department of Education certification for William R. Rundermann
- NJ Department of Education certification for William R. Sundermann II
- Regular meeting minutes for June 22, 2006
- Letter from the Complainant's Counsel to the Pinelands Regional Board of Education members dated March 27, 2006 attaching the following:
  - Facsimile transmittal dated March 22, 2006
  - OPRA request from the Complainant's Counsel noting a fee of \$.50
  - A letter to the Complainant's Counsel from the Custodian dated March 22, 2006 with a copy of a check from the Complainant's Counsel for \$.50
  - Pinelands Board of Education Account Analysis dated June 30, 2006 which indicates that on March 29, 2006 the Complainant picked up the copies of the records requested on March 9, 2006
  - Pinelands Board of Education Account Analysis dated May 31, 2007 which indicates that on October 31, 2006 the Complainant picked up the copies of the records requested on September 17, 2006

The Custodian states that since March 2006, the Complainant has requested numerous documents from Pinelands Regional School District and has been given all of the requested records under OPRA in a timely fashion. The Custodian also states that in May 2006, the Complainant's Counsel filed a Tort Claim Notice against Pinelands Regional School District Board of Education. The Custodian further states that the Custodian's Counsel has also requested and received various records from the district.

The Custodian asserts that the Complainant requested the educational certificates of Mr. William Sundermann on March 9, 2006 and was denied because the records are confidential. The Custodian also asserts that the Complainant requested the school board meeting tapes and transcripts for June 2006 on September 17, 2006 and was provided with the minutes of the regular meeting on October 5, 2006, but was denied the executive session minutes because the minutes were part of pending litigation.

**July 26, 2007**

The Complainant's Response to the Custodian's SOI with the following attachments:

- Letter from Department of Education, Office of Licensure and Credentials, Brenda G. Silver to the Complainant's Counsel dated April 20, 2006
- Government Records Receipt addressed to the Complainant's Counsel dated April 24, 2006
- Letter from the Complainant's Counsel to Paul J. Carr, Esq.

The Complainant asserts that the Custodian did provide her with some of the requested records but the tapes were blank and several of the records requested had missing pages. The Complainant also asserts that she went to the Custodian's office on two (2) separate occasions requesting these records and was told by the Custodian's secretary that the Complainant could no longer receive the requested records because she is being represented by an attorney.

The Complainant states that she has since received the requested certifications from Brenda Silver. The Complainant also states that within the Custodian's SOI, the Custodian only provided the GRC with the first pages of the letter that was submitted to the Custodian from the Complainant's Counsel. Therefore, the Complainant further states that she will send the GRC the entire letter.

#### **September 24, 2007**

Letter from the GRC to the Custodian.<sup>5</sup> The GRC requests that the new Custodian provide the GRC with pertinent information that is missing from the original Custodian's Statement of Information. The GRC specifically requests to know whether there were response letters addressed to the Complainant in response to her March 9, 2006 and September 17, 2006 requests. The GRC also specifically requests that the new Custodian complete the document index that was previously submitted incompletely within the Statement of Information by the prior Custodian. In conclusion, the GRC requests that the new Custodian legally certify to the information that he is providing to the GRC.

#### **September 27, 2007**

Letter from the Custodian to the GRC with the following attachments:

- Policy 0168- Recording Board Meetings
- Policy 8310- Public Records
- Policy 8320- Personnel Records

The Custodian states that the GRC has requested the legal basis for denying the Complainant's request. As such, the Custodian has advised the GRC to view the attached Board Policies. The Custodian also states that these policies list the legal reference used to formulate the policy. The Custodian further states that the information he provided to

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<sup>5</sup> The previous Custodian, Geraldine Townsend, retired as of August 31, 2007 and was replaced by Steven Brennan.  
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the GRC should fulfill the requirements for the legal basis for the prior Custodian's denial of the Complainant's OPRA request.

### **Analysis**

#### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ...*" (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

"...[t]he public agency shall have the burden of proving that the denial of access is authorized by law..." N.J.S.A. 47:1A-6.

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. 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. A custodian must also release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1.

Based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the original Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the original Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve

the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By:

Tiffany L. Mayers  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

October 24, 2007