



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

JON S. CORZINE  
*Governor*

JOSEPH V. DORIA, JR.  
*Commissioner*

**FINAL DECISION**

**June 23, 2009 Government Records Council Meeting**

Walter A. Oberwanowicz  
Complainant

Complaint No. 2008-113

v.

Branchburg Township Board of Education (Somerset)  
Custodian of Record

At the June 23, 2009 public meeting, the Government Records Council (“Council”) considered the June 16, 2009 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 because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant’s request requires an open-ended search of the Board of Education’s files, said request is invalid and as such, the original Custodian, the Superintendent and Mr. Altmire have not unlawfully denied access to the Complainant’s OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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 23<sup>rd</sup> Day of June, 2009



Robin Berg Tabakin, Chair  
Government Records Council

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

Kathryn Forsyth  
Government Records Council

**Decision Distribution Date: June 29, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 23, 2009 Council Meeting**

**Walter A. Oberwanowicz<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-113**

v.

**Branchburg Township Board of Education (Somerset)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Correspondence and electronic mail between district administration, Board of Education and Branchburg Township Committee members, collectively or as individuals, in which Walter Oberwanowicz's name or position is mentioned or referred.

**Request Made:** June 3, 2008

**Response Made:** June 12, 2008

**Custodian:** Donna Tolley<sup>3</sup>, Frank Altmire<sup>4</sup> and John Bolil<sup>5</sup>

**GRC Complaint Filed:** June 24, 2008<sup>6</sup>

**Background**

**June 3, 2008**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**June 12, 2008**

Superintendent's response to the OPRA request. The Superintendent responds in writing to the Complainant's OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such request. The Superintendent states that he has enclosed two (2) records that meet the parameters of the Complainant's OPRA request.

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<sup>1</sup> Represented by David Trombadore, Esq.; however, the Complainant requests that his attorney not be contacted regarding this Denial of Access Complaint.

<sup>2</sup> Represented by David B. Rubin, Esq. (Metuchen, NJ).

<sup>3</sup> Custodian at the time of the Complainant's OPRA request.

<sup>4</sup> Custodian at the time of the Board of Education's Statement of Information submission.

<sup>5</sup> Custodian at the time of the Board of Education's document index submission dated September 5, 2008.

<sup>6</sup> The GRC received the Denial of Access Complaint on said date.

**June 24, 2008**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated June 3, 2008
- Superintendent’s response to the Complainant’s OPRA request dated June 12, 2008

The Complainant states that he only received one (1) record responsive to his OPRA request. The Complainant states that he has been informed that there are several other records responsive which the Superintendent has not provided, two (2) of which the Complainant states the Superintendent read to him. The Complainant also states that the Superintendent determined which records could be released pursuant to said request rather than the Custodian.

The Complainant did not agree to mediate this complaint.

**July 16, 2008**

Request for the Statement of Information (“SOI”) sent to the Custodian.

**July 22, 2008**

Letter of Representation from original Custodian’s Counsel. Counsel states that the original Custodian ceased her employment with the Board of Education (“BOE”) on June 30, 2008. Counsel asserts that, although the original Custodian was the Custodian at the time of the Complainant’s OPRA request, the original Custodian was not responsible for the response to said request. Counsel states that in the course of processing said request, the original Custodian learned that additional records responsive may exist. Counsel states that when the District Superintendent frustrated the original Custodian’s efforts to obtain the records responsive to the Complainant’s OPRA request, the original Custodian refused to have anything else to do with said request. Counsel states that the Superintendent then handled the request himself.

**July 23, 2008**

Telephone call between from the GRC to the BOE. The BOE informs the GRC that Frank Altmire is the Interim Board Secretary/Business Administrator and Custodian.

**July 31, 2008**

E-mail from GRC to current Custodian’s Counsel. The GRC grants Counsel an extension of time until the close of business on August 11, 2008 to submit the Custodian’s completed SOI.<sup>7</sup>

**August 8, 2008**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated June 3, 2008

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<sup>7</sup> In response to Counsel’s request via telephone on July 31, 2008.

- Superintendent's response to the Complainant's OPRA request dated June 12, 2008, with attachments
- Thirty-five (35) e-mails identified by the current Custodian as responsive to the Complainant's OPRA request<sup>8</sup>

The Custodian, Frank Altmire, states that he has served in the position of Custodian since July 11, 2008. The Custodian states that at the time the BOE received and responded to the Complainant's OPRA request which is the subject of this Denial of Access Complaint, Donna Tolley occupied the position of Custodian, but ceased her employment with the BOE on June 30, 2008. The Custodian states that he has no firsthand knowledge of the events surrounding the Complainant's OPRA request and response to said request. However, the Custodian states that the BOE received the Complainant's OPRA request on June 3, 2008, and the Superintendent provided a written response to the Complainant on June 12, 2008.

Additionally, the Custodian states that in an effort to assure himself that the BOE provided the Complainant with all of the records to which he is entitled, the Custodian conducted his own search for records responsive to the Complainant's OPRA request with assistance from the Board Attorney. The Custodian states that Eric Schaefer, the employee who administers the BOE's e-mail system, performed a series of searches under the direction of the Custodian and the Board Attorney by employing words and phrases intended to locate all e-mails requested. The Custodian states that the search parameters included all e-mails between "branchburg.k12.nj.us" (the BOE's e-mail address) and "branchburg.nj.us" (the Township's e-mail address) in which any of the following words appeared in the text: "Walter," "Walt," "Oberwanowicz," "special services," or "student services." The Custodian also states that he directed Eric Schaefer to also search for any e-mails that contain references to the Township Committee, the Township Administrator or any of the Township Committee members. The Custodian states that both he and the Board Attorney reviewed all the identified e-mails to determine if said e-mails were responsive to the Complainant's OPRA request, and these are attached to this SOI, which the Custodian also sent to the Complainant. Further, the Custodian states that he has not withheld or claimed any privilege to any e-mails responsive to the Complainant's OPRA request. The Custodian also states that because of the various search terms used to locate the records responsive, many e-mails are duplicates, as well as e-mails authored by the Complainant himself.

Additionally, the Custodian states that the Complainant referenced in his complaint a June 10, 2008 conversation with Donna Tolley, the original Custodian, in which Ms. Tolley claimed that the Superintendent interfered with her response to the Complainant's OPRA request. The Custodian states that he has spoken to the Superintendent, who vigorously disputes Ms. Tolley's allegation.

The Custodian also states that no records responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

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<sup>8</sup> The Custodian attached additional records to his SOI, however, said records are not relevant to the adjudication of this Denial of Access Complaint.  
Walter Oberwanowicz, Branchburg Township Board of Education (Somerset), 2008-113 – Findings and Recommendations of the Executive Director 3

### **August 13, 2008**

Letter from GRC to Custodian. The GRC states that the Custodian's SOI dated August 8, 2008 is incomplete because the Custodian did not complete the document index as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007), nor did the Custodian sign the SOI form or provide a separate certification. The GRC requests that the Custodian complete the document index portion of the SOI.

### **September 5, 2008<sup>9</sup>**

Letter from John Bolil, current Custodian, to GRC. Mr. Bolil states that Frank Altmire is on a medical leave of absence and that he has been appointed Custodian in Mr. Altmire's absence. The Custodian states that he is providing a response to the GRC's August 13, 2008 letter with assistance from the Board Attorney. The Custodian states that he has been advised that the Complainant contacted Mr. Altmire via telephone after receiving Mr. Altmire's SOI, in which the Complainant asserted that his OPRA request not only sought communications between BOE representatives and Township representatives, but also internal BOE communications from the Superintendent in which the Complainant's name or position were mentioned. The Custodian states that Mr. Altmire informed the Complainant that both he and the Board Attorney interpreted the Complainant's OPRA request to seek only communications between BOE representatives and Township representatives.

Additionally, the current Custodian provides a certification listing the thirty-five (35) e-mails identified by Mr. Altmire as responsive to the Complainant's OPRA request. The current Custodian certifies that the BOE retains e-mails for a three (3) year period on back-up tapes or servers.

### **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 ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

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<sup>9</sup> The parties submitted additional correspondence; however, said correspondence is not relevant to the adjudication of this Denial of Access Complaint.

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. 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 this instant complaint, the Complainant states that he submitted his OPRA request on June 3, 2008. The Complainant states that the Superintendent responded to said request via memorandum dated June 12, 2008, the seventh (7<sup>th</sup>) business day following the BOE’s receipt of said request, in which the Superintendent provided two (2) records to the Complainant. However, the Complainant asserts that there are additional records responsive to his OPRA request which he believes the Superintendent withheld from disclosure.

Frank Altmire, the Custodian at the time of the BOE’s SOI submission to the GRC, stated that because he was not the Custodian at the time of the Complainant’s OPRA request or Superintendent’s response to said request, he has no firsthand knowledge of the circumstances surrounding said request and response. However, Mr. Altmire stated in his SOI that he conducted his own search for records responsive to the Complainant’s request. Mr. Altmire states Eric Schaefer, the employee responsible for the BOE’s e-mail system, performed a series of searches under the direction of the Custodian and the Board Attorney by employing words and phrases intended to locate all e-mails requested. Mr. Altmire states that the search parameters included all e-mails between “branchburg.k12.nj.us” (the BOE’s e-mail address) and “branchburg.nj.us” (the Township’s e-mail address) in which any of the following words appeared in the text: “Walter,” “Walt,” “Oberwanowicz,” “special services,” or “student services.” Additionally, Mr. Altmire states that he directed Eric Schaefer to search for any e-mails containing references to the Township Committee, the Township Administrator or any of the Township Committee members. Mr. Altmire states that he provided thirty-five (35) e-mails responsive to the Complainant’s request to the Complainant by way of the SOI. Further, Mr. Altmire states that he has not withheld or claimed any privilege to any e-mails responsive to the Complainant’s OPRA request.

Although both the Superintendent and Mr. Altmire have identified records which they believe are responsive to the Complainant’s request, the New Jersey Superior Court has described the level of specificity required when a requestor submits an OPRA request to a public agency. Specifically, the court held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records ‘readily accessible for inspection, copying, or*

*examination.*' N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>10</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."<sup>11</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)."

In this instant complaint, the Complainant sought access to correspondence and e-mail between district administration, Board of Education and Branchburg Township Committee members, collectively or as individuals, in which the Complainant's name or position is mentioned or referred. Said request requires an open-ended search of the BOE's files because the Complainant failed to identify with reasonable clarity the records sought. Specifically, although the Complainant identified e-mails as one (1) type of record sought, the Complainant also requested "correspondence" without further reference as to what type of correspondence is requested, such as letters, memorandums, or facsimile transmittals, etc. Additionally, the Complainant failed to identify specific parties to the requested correspondence, but rather requested correspondence between categories of personnel, such as Township Committee members and district administration.

Therefore, because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant's request requires an open-ended search of the BOE's files, said request is invalid and as such, the original Custodian, the Superintendent and Mr. Altmire have not unlawfully denied access to the Complainant's

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<sup>10</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>11</sup> As stated in Bent, *supra*.



OPRA request pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant's request requires an open-ended search of the Board of Education's files, said request is invalid and as such, the original Custodian, the Superintendent and Mr. Altmire have not unlawfully denied access to the Complainant's OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Dara Lownie  
Senior Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

June 16, 2009