



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

March 29, 2011 Government Records Council Meeting

Joseph Krrywda
Complainant

Complaint No. 2008-200

v.

Barnegat Township School District (Ocean)
Custodian of Record

At the March 29, 2011 public meeting, the Government Records Council (“Council”) considered the March 22, 2011 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 this complaint should be dismissed because both parties agreed to dismiss said complaint without costs against all parties with prejudice on June 29, 2010. Therefore, 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 29th Day of March, 2011

Robin Berg Tabakin, Chair
Government Records Council

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

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: April 1, 2011



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
March 29, 2011 Council Meeting**

**Joseph Krzywda¹
Complainant**

GRC Complaint No. 2008-200

v.

**Barnegat Township School District (Ocean)²
Custodian of Records**

Records Relevant to Complaint:

1. Resumes for the Social Studies teaching position at the Barnegat Township School District for the school year 2008-2009.
2. Credentials of the teacher in the Social Studies teaching position at the Barnegat Township School District for the school year 2008-2009.

Request Made: August 14, 2008

Response Made: August 16, 2008

Custodian: Holly Sliker³

GRC Complaint Filed: September 3, 2008⁴

Background

September 30, 2009

Government Records Council's ("Council") Interim Order. At its September 30, 2009 public meeting, the Council considered the September 24, 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, found that:

“... based on the contested facts in this complaint, 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 a determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.”

¹ No legal representation listed on record.

² Represented by Ben A. Montenegro, Esq. (Brick, NJ).

³ The original custodian of record was Mr. Joseph M. Cappello.

⁴ The GRC received the Denial of Access Complaint on said date.

October 5, 2009

Council's Interim Order distributed to the parties.

December 30, 2009

Complaint transmitted to the Office of Administrative Law ("OAL")

June 29, 2010

Letter from the Custodian's Counsel to the Honorable W. Reba, A.L.J. attaching a Stipulation of Dismissal with prejudice and without costs. The Custodian's Counsel states that the matter in difference in the instant complaint having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against all parties with prejudice.⁵

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because both parties agreed to dismiss said complaint without costs against all parties with prejudice on June 29, 2010. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

March 22, 2011

⁵ The stipulation was signed by both the Complainant and the Custodian's Counsel.
Joseph Krrynda v. Barnegat Township School District (Ocean), 2008-200 – Supplemental Findings and Recommendations of
the Executive Director



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

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

INTERIM ORDER

September 30, 2009 Government Records Council Meeting

Joseph Krrywda
Complainant

Complaint No. 2008-200

v.

Barnegat Township School District (Ocean)
Custodian of Record

At the September 30, 2009 public meeting, the Government Records Council (“Council”) considered the September 23, 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 based on the contested facts in this complaint, 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 a 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 30th Day of September, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach, Secretary
Government Records Council



Decision Distribution Date: October 6, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 30, 2009 Council Meeting**

**Joseph Krzywda¹
Complainant**

GRC Complaint No. 2008-200

v.

**Barnegat Township School District (Ocean)²
Custodian of Records**

Records Relevant to Complaint:

1. Resumes for the Social Studies teaching position at the Barnegat Township School District for the school year 2008-2009.
2. Credentials of the teacher in the Social Studies teaching position at the Barnegat Township School District for the school year 2008-2009.

Request Made: August 14, 2008

Response Made: August 16, 2008

Custodian: Holly Sliker³

GRC Complaint Filed: September 3, 2008⁴

Background

August 14, 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.

August 21, 2008

The original Custodian's response to the OPRA request, attaching an official Barnegat Board of Education ("BOE") OPRA request form.

The original Custodian responds in writing to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request. The original Custodian states that twenty-six (26) pages of records are available at a copying cost of \$14.00 plus postage. The original Custodian states that if the Complainant wants the records responsive mailed to him, the Complainant must forward a check for \$14.00 to the BOE.

¹ No legal representation listed on record.

² Represented by Ben A. Montenegro, Esq. (Brick, NJ).

³ The original custodian of record was Mr. Joseph M. Cappello.

⁴ The GRC received the Denial of Access Complaint on said date.

Additionally, the original Custodian advises that the Complainant has not used the BOE's official OPRA request form which has been attached and indicates the total cost for copies and postage.

August 22, 2008

Letter from the Complainant to Ms. Sandi Littleford ("Ms. Littleford") of the Personnel Department. The Complainant states that a response to his OPRA request is past due.

September 3, 2008

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

- Complainant's OPRA request dated August 14, 2008.
- Facsimile confirmation sheet dated August 14, 2008.
- Certified mail receipt dated August 15, 2008.
- Letter from the Complainant to the Custodian dated August 22, 2008.

The Complainant states that he submitted an OPRA request to Ms. Littleford via facsimile on August 14, 2008. The Complainant states that he sent a copy of the OPRA request to Ms. Littleford via certified mail on August 15, 2008. The Complainant states that he sent a letter to Ms. Littleford on August 22, 2008 advising that a response was past due. The Complainant avers that he also left a voicemail message for Ms. Littleford on August 28, 2008 but has received no response.

The Complainant contends that based on the progression of events, Ms. Littleford has knowingly and willfully violated OPRA.

The Complainant does not agree to mediate this complaint.

September 8, 2008

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

September 10, 2008

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated August 14, 2008.
- Facsimile confirmation sheet dated August 14, 2008.
- Letter from the Custodian to the Complainant dated August 21, 2008.

The Custodian certifies that no records responsive 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").⁵

⁵ The Custodian does not certify how she conducted a search for the requested records.

The Custodian states that Ms. Littleford received the Complainant's OPRA request via facsimile on August 14, 2008 and via certified mail on August 15, 2008. The Custodian states that Ms. Littleford forwarded the OPRA request to the original Custodian on August 14, 2008, and subsequently copied all records responsive and provided them to the original Custodian on August 15, 2008.

The Custodian certifies that a letter was sent to the Complainant on August 21, 2008 advising him that the records responsive were prepared for disclosure. The Custodian states that the letter advised the Complainant that he would have to submit a payment of \$14.00 to receive the records responsive. Additionally, the Complainant asserts that the letter advised the Complainant that he would have to complete the attached BOE's official OPRA request form, which indicated the cost of the records responsive.

The Custodian contends that the Complainant contacted Ms. Littleford via telephone on August 22, 2008 stating that a response was late and hung up. The Custodian asserts that Ms. Littleford attempted to contact the Complainant several times thereafter, but that the Complainant did not allow Ms. Littleford to advise him that a response had been sent.

Finally, the Custodian avers that, contrary to the Complainant's assertion, the BOE's response was actually due on August 25, 2008.⁶

September 10, 2008

E-mail from the GRC to the Custodian. The GRC states that it is in receipt of the Custodian's SOI and needs additional information. The GRC requests that the Custodian provide a copy of the BOE's official OPRA request form that was attached to the letter from the original Custodian to the Complainant dated August 21, 2008 along with proof that the response was mailed.

September 11, 2008

E-mail from the GRC to the Custodian. The GRC requests that the Custodian provide a legal certification along with the two (2) additional documents requested on September 10, 2008.

September 11, 2008

E-mail from the Custodian to the GRC attaching the following:

- Legal certification from Dolores Schubiger ("Ms. Schubiger"), Secretary of the Board Secretary.
- Certified mail receipt dated September 11, 2008.
- The BOE's official OPRA request form that was attached to the original Custodian's letter to the Complainant dated August 21, 2008 annotating the cost for providing the records responsive thereon.

⁶ The evidence of record shows that the seven (7) business day time frame actually expired on August 24, 2007 at 12:00am, which begins the eighth (8th) business day after receipt of the Complainant's OPRA request.

- Complainant’s OPRA request dated August 14, 2008.

The Custodian states that she has attached the certified mail receipt proving that the BOE has mailed the Complainant a copy of the SOI and the BOE’s official OPRA request form that was attached to the original Custodian’s letter to the Complainant dated August 21, 2008. Additionally, the Custodian states that attached is a legal certification from Ms. Schubiger, in which she certifies that she typed the August 21, 2008 letter for the original Custodian’s signature and sent it to the mailroom to be sent out via standard mail on the same date.

September 15, 2008

The Complainant’s response to the Custodian’s SOI. The Complainant certifies that he never received a letter from the original Custodian dated August 21, 2008 attaching the BOE’s official OPRA request form indicating the cost of the records responsive. Additionally, the Complainant certifies that he never received any redacted records from the Custodian. Further, the Complainant certifies that he does not recall Ms. Littleford contacting him regarding his 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 ... or that has been received* in the course of his or its official business ...” (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. 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 the instant complaint, the Custodian certified that the BOE responded to the Complainant's August 14, 2008 OPRA request on August 21, 2008. The Custodian also avered that Ms. Littleford attempted to contact the Complainant multiple times via telephone, but that the Complainant did not allow Ms. Littleford to inform him that a response was forthcoming. Additionally, Ms. Schubiger certified that she prepared the letter dated August 21, 2008 for the original Custodian's signature and delivered the letter to the mailroom to be sent out via standard mail.

However, the Complainant submitted a subsequent certification refuting that he never received a letter from the original Custodian dated August 21, 2008, never received any records and does not recall receiving any messages from Ms. Littleford via telephone.

Therefore, based on the contested facts in this complaint, 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 a 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 contested facts in this complaint, 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 a determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

September 23, 2009