



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

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 29, 2013 Government Records Council Meeting

Gregory W. Havlusch, Jr.
Complainant

Complaint No. 2011-243

v.

Borough of Allenhurst (Monmouth)
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 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 the Complainant withdrew his complaint via e-mail to the GRC on January 9, 2013. 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 January, 2013

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: February 6, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 29, 2013 Council Meeting**

**Gregory W. Havlusch, Jr.¹
Complainant**

GRC Complaint No. 2011-243

v.

**Borough of Allenhurst (Monmouth)²
Custodian of Records**

Records Relevant to Complaint:

A copy of the sign-in sheets indicating hours worked at the Allenhurst Beach Club by Jim Foley for a period beginning April 26, 2011 and ending July 15, 2011.

Request Made: July 15, 2011

Response Made: July 20, 2011

Custodian: Lori L. Osborn

GRC Complaint Filed: July 22, 2011³

Background

December 18, 2012

Government Records Council's ("Council") Interim Order. At its December 18, 2012 public meeting, the Council considered the November 20, 2012⁴ 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:

The Executive Director respectfully recommends the Council find that:

1. Because the requested sign-in sheets qualify as disclosable payroll records pursuant as defined by *N.J.A.C. 12: 16-2.1* and effectuated by *N.J.S.A. 47:1A-10*, the Council finds that the Custodian has unlawfully denied the Complainant access to the requested records. See *Jackson v. Kean University*, GRC Complaint No. 2002-98 (February 2004). Therefore, the Custodian must provide access to the requested records.

¹ No legal representation listed on record.

² Represented by David Laughlin, Esq., of Birdsall and Laughlin (Wall, NJ).

³ The GRC received the Denial of Access Complaint on said date.

⁴ This complaint was prepared and scheduled for adjudication at the Council's November 27, 2012 meeting; however, said meeting was cancelled due to lack of quorum.

2. **The Custodian shall comply with item #1 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, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director.⁶**
3. 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.

December 19, 2012

Council's Interim Order distributed to the parties.

January 9, 2013

E-mail from the Complainant to the GRC. The Complainant states that he has received the requested records and wishes to withdraw his Complaint.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this Complaint should be dismissed because the Complainant withdrew his complaint via e-mail to the GRC on January 9, 2013. Therefore, no further adjudication is required.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013

⁵ "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."

⁶ 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.



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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

December 18, 2012 Government Records Council Meeting

Gregory W. Havlusch, Jr.
Complainant

Complaint No. 2011-243

v.

Borough of Allenhurst (Monmouth)
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council ("Council") considered the November 20, 2012 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. Because the requested sign-in sheets qualify as disclosable payroll records pursuant as defined by *N.J.A.C. 12: 16-2.1* and effectuated by *N.J.S.A. 47:1A-10*, the Council finds that the Custodian has unlawfully denied the Complainant access to the requested records. See *Jackson v. Kean University*, GRC Complaint No. 2002-98 (February 2004). Therefore, the Custodian must provide access to the requested records.
2. **The Custodian shall comply with item #1 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, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
3. 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.

¹ "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."

² 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*.

Interim Order Rendered by the
Government Records Council
On The 18th Day of December, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: December 19, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 18, 2012 Council Meeting**

**Gregory W. Havlusch, Jr.¹
Complainant**

GRC Complaint No. 2011-243

v.

**Borough of Allenhurst (Monmouth)²
Custodian of Records**

Records Relevant to Complaint:

A copy of the sign-in sheets indicating hours worked at the Allenhurst Beach Club by Jim Foley for a period beginning April 26, 2011 and ending July 15, 2011.

Request Made: July 15, 2011

Response Made: July 20, 2011

Custodian: Lori L. Osborn

GRC Complaint Filed: July 22, 2011³

Background

July 15, 2011

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.

July 20, 2011

Custodian's response to the OPRA request. The Custodian responds to the Complainant's request in writing on the Complainant's OPRA request form on the third (3rd) business day following receipt of such request. The Custodian states that access to the requested record is denied because the requested sign-in sheets are employee time sheets that constitute personnel records exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-10.

July 22, 2011

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

- Complainant's OPRA request dated July 15, 2011
- Letter from the Custodian to the Complainant dated July 20, 2011

¹ No legal representation listed on record.

² Represented by David Laughlin, Esq., of Birdsall and Laughlin (Wall, NJ).

³ The GRC received the Denial of Access Complaint on said date.

The Complainant contends that he was unlawfully denied access to the requested records and disagrees with the Custodian's assertion that the requested records are exempt from disclosure. The Complainant agrees to mediate this complaint.

July 25, 2011

Offer of Mediation sent to the Custodian.⁴

August 4, 2011

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

August 8, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated July 15, 2011
- Letter from the Custodian to the Complainant dated July 20, 2011

The Custodian certifies that her search for the requested records yielded the requested sign-in sheets. The Custodian further certifies that the requested records have a six (6) year retention schedule. In addition, the Custodian certifies that none of the requested records have been destroyed.

The Custodian states that the Borough attorney advised her that the Complainant's request should be denied because the requested records constitute OPRA exempt personnel records per N.J.S.A. 47:1A-10. The Custodian maintains that the sign-in sheets are not used to calculate Jim Foley's salary because as a manager, he is not an hourly employee. Instead, the Custodian contends that Mr. Foley only signs the time sheet so the Borough administration has an idea of the number of hours worked by Allenhurst Beach Club management.

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*

⁴ The Custodian declined to respond to the GRC's Offer of Mediation.

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.

In regards to payroll records, OPRA provides that:

“...the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record ... *except that* ... an individual's name, title, position, salary, *payroll record*, length of service, date of separation and the reason therefor, and the amount and type of any pension received ... *shall be a government record*[.]” (Emphasis added.) N.J.S.A. 47:1A-10.

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.

Further, 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 matter, the Complainant requested sign-in sheets for a Borough employee. In response, the Custodian denied access to the requested records stating that the sign in sheets are as personnel records that are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-10. In the Denial of Access Complaint, the Complainant contended that the sign-in sheets are payroll records and therefore not exempt from disclosure.

OPRA provides that payroll records are government records subject to disclosure. N.J.S.A. 47:1A-10. In Jackson v. Kean University, GRC Complaint No. 2002-98 (February 2004), the Council undertook to define the term “payroll record” as follows:

“Neither OPRA nor Executive Order #11 defines the term ‘payroll record.’ Thus, we look to the ordinary meaning of that term, and are informed by other regulatory provisions defining that phrase. ‘Payroll’ is defined as a list of employees to be paid and the amount due to each of them. Black's Law Dictionary (7th Ed., 1999). It is also clear that documents included within the payroll record exception are, in part, records required by law to be maintained or reported in connection with payment of salary to employees and is adjunct to salary information required to be disclosed. In this regard, N.J.A.C. 12: 16-2.1, a Department of Labor regulation entitled ‘Payroll records,’ requires the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

The State of New Jersey, as well as its constituent agencies, is an employing unit. (See N.J.S.A. 43:21-19, a statute entitled 'Definitions' in Article 1 of the Unemployment Compensation Law, which defines 'employing unit' to mean the State or any of its instrumentalities or any political subdivisions.) Therefore, the State is required to keep payroll records in accordance with *N.J.A.C.* 12:16-2. By the same token, Kean University, as an instrumentality of the State, is an employing unit. See N.J.S.A. 18A:62-1 and 18A:64-21-1 (Governor continues as public employer for purposes of negotiation by state colleges.)

Additionally, because certain types of sick leave payments are treated as wages within the meaning of the Unemployment Compensation and Temporary Disability Benefits laws for both tax and benefit entitlement purposes, the payroll record should include the type of leave so that it may be treated appropriately for tax and benefit purposes. See *N.J.A.C.* 12:16-4.2.

Based upon the above, an employee's payroll records should include information that will allow a person to determine whether an employee took a leave of absence, the dates of the leave, whether it was paid, and if so, the amount of salary received for the paid leave of absence. For example, if a payroll record is for a two week period, and the employee is paid \$52,000.00 a year³, and has taken a paid leave of absence of one week for that pay period, the payroll record should show that the employee actually worked one week, took one week of leave and received

\$2,000.00. The fact that the employee received her full salary during the pay period, even though she took a week of leave, shows that it was a paid leave of absence. Therefore, the relevant law supports a conclusion that the requested information should be disclosed. Jackson, *supra*.

Employee sign-in sheets detail the number of weeks and dates specifically worked as specified in *N.J.A.C.* 12:16-2.1. Thus, the Complainant's request for employee sign-in sheets is a request for payroll records, which records are subject to disclosure under N.J.S.A. 47:1A-10.

Accordingly, because the requested sign-in sheets qualify as disclosable payroll records pursuant as defined by *N.J.A.C.* 12:16-2.1 and effectuated by N.J.S.A. 47:1A-10, the Council finds that the Custodian has unlawfully denied the Complainant access to the requested records. *See Jackson v. Kean University*, GRC Complaint No. 2002-98 (February 2004). Therefore, the Custodian must provide access to the requested records.

Whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

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. Because the requested sign-in sheets qualify as disclosable payroll records pursuant as defined by *N.J.A.C.* 12: 16-2.1 and effectuated by N.J.S.A. 47:1A-10, the Council finds that the Custodian has unlawfully denied the Complainant access to the requested records. *See Jackson v. Kean University*, GRC Complaint No. 2002-98 (February 2004). Therefore, the Custodian must provide access to the requested records.
2. **The Custodian shall comply with item #1 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, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director.⁶**

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3. 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: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

November 20, 2012⁷

⁷ This complaint was prepared and scheduled for adjudication at the Council's November 27, 2012 meeting; however, said meeting was cancelled due to lack of quorum.
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