



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

December 18, 2012 Government Records Council Meeting

David Herron
Complainant

Complaint No. 2011-268 and 2011-269

v.

New Jersey Department of Education
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the December 11, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Complainant’s argument that the only way to validate the authenticity of the requested transcripts is to view the originals, fails to override the longstanding policy that social security numbers are confidential. Therefore, the Custodian has lawfully redacted the social security numbers from the requested transcripts pursuant to N.J.S.A. 47:1A-1.1 and Burnett v. County of Bergen, 198 N.J. 408, 423 (2009). *See also* Bonanno v. Garfield Board of Education, GRC Complaint No. 2006-62 (Interim Order dated July 2007).
2. In balancing the Complainant’s need for the requested transcripts against the Custodian’s need to keep the dates of birth on said transcripts confidential, the Custodian’s need for privacy outweighs the Complainant’s need for access. Specifically, the Complainant’s argument that the only way to validate the authenticity of the requested transcripts is to view the originals, fails to override the potential harm for identity or financial fraud present with the disclosure of dates of birth. As such, the Custodian has lawfully denied access to the dates of birth pursuant to N.J.S.A. 47:1A-1.
3. The Custodian failed to bear her burden of proving a lawful denial of access, pursuant to N.J.S.A. 47:1A-6, to grades and GPAs contained on the requested transcripts under the Federal Education Rights Privacy Act (“FERPA”) because the Custodian failed to explain with specificity the legal basis for the claimed non-disclosure of documents under FERPA. *See* Schwarz v. New Jersey Department of Human Services, GRC Complaint No. 2004-30 (Interim Order dated June 2004).
4. Because the individual grades are not data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A.

47:1A-10, the Custodian's redaction of the individual grades contained in the requested transcripts is lawful pursuant to N.J.S.A. 47:1A-10.

5. Because a minimum GPA is required to obtain licensure from the Department of Education, the GPA is data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A. 47:1A-10. As such, the GPAs contained on the requested transcripts are public and the Custodian unlawfully redacted the GPAs.
6. The Complainant's OPRA requests specifically sought access to unfettered access to the *original* transcripts. Because the Custodian lawfully redacted the social security numbers, dates of birth and individual grades, the Custodian's unlawful redaction of GPAs does not amount to an unlawful denial of access to the requested records. The Custodian's denial of access to the *original* transcripts is lawful. Thus, the Council declines to order disclosure of the redacted transcripts revealing the GPAs since the Complainant's request is clear in that it seeks original documents and not copies.

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 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 20, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**David Herron¹
Complainant**

GRC Complaint Nos. 2011-268 and 2011-269

v.

**New Jersey Department of Education²
Custodian of Records**

Records Relevant to Complaint:

- GRC Complaint No. 2011-268: Inspection of the original college transcripts of:
 1. John Fiore
 2. Lissa Landou
 3. Linda Marie Boname (AKA Linda Marie Mithaug)
 4. John Ponsi
 5. Dean M. Portas
 6. Dana Sullivan
 7. Sherrie Lee Szeto
 8. Margaret J. Whitsett
- GRC Complaint No. 2011-269: Inspection of the original college transcripts of:
 1. Frank Alvarez
 2. John Porcelli
 3. Scott White

Requests Made: July 25, 2011

Responses Made: July 25, 2011, August 1, 2011 and August 3, 2011

Custodian: Maria Casale

GRC Complaint Filed: August 12, 2011³

Background

August 12, 2011

Denial of Access Complaints filed⁴ with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA requests dated July 25, 2011

¹ No legal representation listed on record.

² Represented by DAG Susan Huntley, on behalf of the NJ Attorney General.

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

⁴ The Complainant filed two (2) separate complaints which are consolidated here because the content of the complaints is almost identical with the exception of the differing OPRA requests.

- Custodian's response to the OPRA requests dated July 25, 2011
- E-mails from Complainant to Custodian dated August 1, 2011
- Custodian's subsequent response to the Complainant's OPRA requests dated August 1, 2011
- Custodian's final response to the Complainant's OPRA requests dated August 3, 2011

The Complainant states that he submitted his OPRA requests on July 25, 2011 to inspect the original college transcripts of multiple individuals. The Complainant states that the Custodian denied his OPRA requests on August 2, 2011.

Additionally, the Complainant does not agree to mediate these complaints.

August 24, 2011

Custodian's Statements of Information ("SOI")⁵ with the following attachments:

- Complainant's OPRA requests dated July 25, 2011
- Custodian's response to the OPRA requests dated July 25, 2011
- E-mails from Complainant to Custodian dated August 1, 2011
- Custodian's subsequent response to the Complainant's OPRA requests dated August 1, 2011
- Custodian's final response to the Complainant's OPRA requests dated August 3, 2011

The Custodian certifies that she received the Complainant's OPRA requests on July 25, 2011. The Custodian certifies that she responded to said requests in writing on July 25, 2011 to clarify whether the Complainant wanted to inspect the requested records. The Custodian certifies that she received a voicemail from the Complainant on August 2, 2011 regarding his OPRA requests. The Custodian certifies that she returned the Complainant's phone call during which time the Complainant indicated that he is only interested in viewing the unredacted original college transcripts for the individuals he identified. The Custodian certifies that she informed the Complainant that she could only provide access to redacted copies, not originals, redacting social security numbers, dates of birth and grades. The Custodian certifies that the Complainant informed her that he was not interested in coming in to view the copies and they both agreed that the Custodian would deny the request.

The Custodian asserts that she denied access to the redacted portions described above pursuant to N.J.S.A. 47:1A-1 ("a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy") and Burnett v. County of Bergen, 198 N.J. 408 (2009).

⁵ The Custodian filed two (2) separate SOIs, which are consolidated here because the content of the SOIs is almost identical with the exception of the differing OPRA requests.
David Herron v. New Jersey Department of Corrections, 2011-268 and 2011-269 – Findings and Recommendations of the Executive Director

The Custodian certifies that her search for the requested records included contacting the Office of Licensing and searching the OPRA Custodian’s files since the same records had previously been provided to the Complainant.

The Custodian also certifies that no records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services.

October 26, 2012

Letters from GRC to Complainant and Custodian.⁶ The GRC states that because privacy interests are implicated in the instant Denial of Access Complaints, the GRC will employ the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995). As such, the GRC asks the Complainant and the Custodian to respond to balancing test questions by the close of business on October 31, 2012.⁷

November 7, 2012

Complainant’s responses to the balancing test questions.

Need for Access Questions	Complainant’s Response
1. Why do you need the requested records or information?	<p>The requested records consist of college transcripts of individuals who have applied/received licensing from the New Jersey Department of Education. Candidates seeking New Jersey certification are required by State statute to submit original college transcripts with their applications for certification. Candidates must also meet grade point average (“GPA”) eligibility in order to receive certification. In addition, No Child Left Behind (“NCLB”), a federally mandated teacher qualification requirement, also mandates that certified staff meet certain guidelines. NCLB also established guidelines enabling parents to seek and review the qualifications of any teaching staff member certified by the local certifying agency, the New Jersey Department of Education.</p> <p>Original college transcripts, as a security feature, are imprinted with a water seal and a seal from the college issuing the document. Such security features cannot be seen on transcripts which have been copied.</p>
2. How important are the requested records or information to you?	In order to review the requested records for authenticity, one would need to see the original records. The records are extremely important to the Complainant. It is the only way to review the records for their authenticity.

⁶ The GRC sent separate letter requests to the Complainant and the Custodian.

⁷ The GRC extended the deadline date to November 7, 2012 because all State offices were closed October 28, 2012 – October 31, 2012 due to Hurricane Sandy.

3. Do you plan to redistribute the requested records or information?	The Complainant does not plan to redistribute the requested records or information which he is seeking via his OPRA requests.
4. Will you use the requested records or information for unsolicited contact of the individuals named in the government records?	The Complainant does not plan to use the information for any unsolicited contact of the individuals named in the government records.

November 7, 2012

Custodian's responses to the balancing test questions.

Factors for Consideration in Balancing Test	Custodian's Response
1. The type of records requested.	Written college and graduate school transcripts for applicants for teacher and/or administrator licensure. Transcripts are received by the Department of Education, Office of Licensure and Credentials, as part of the application for teacher and school administrator candidates. Transcripts are reviewed by the Office of Licensure to verify that candidates for licensure have met all degree and course requirements for certification in their chosen subject area and grade configuration, and that their GPAs meet the minimum requirement.
2. The information the requested records do or might contain.	Transcripts contain the applicant's name, dates of attendance, titles of courses taken by semester, and credit hours as well as the following items which the Custodian redacted: dates of birth, social security numbers, grades for individual classes and GPAs.
3. The potential harm in any subsequent non-consensual disclosure of the requested records.	Disclosure violates the individuals' reasonable expectation of privacy. Disclosure of social security numbers and dates of birth presents a risk of identity or other financial fraud and abuse. Grades and GPAs were redacted pursuant to the Federal Education Rights Privacy Act ("FERPA"), <u>N.J.S.A. 47:1A-1</u> and <u>Burnett v. County of Bergen</u> , 198 <u>N.J.</u> 408 (2009).
4. The injury from disclosure to the relationship in which the requested record was generated.	Transcripts are reviewed by the Office of Licensure to verify that candidates for licensure have met all course requirements and that their GPAs meet the minimum requirement. Violating the individual's reasonable expectation of privacy represents a potential harm to the candidates.
5. The adequacy of safeguards to prevent unauthorized disclosure.	Once the transcripts are received, they are scanned and matched to the rest of the applicant's computerized application file. The scanned images are only available to

	Office of Licensing staff with password-protected access to their office’s computer system. The paper transcripts are then boxed and sent to archives. These records are always provided to requestors in redacted form to protect the specific items of information described above.
6. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access.	The Department of Education is not aware of any express statutory mandate, articulated public policy, or other recognized public interest militating toward access of the rejected records. The Department maintains its position that the individuals’ grade history, social security number and date of birth are confidential pursuant to FERPA, <u>N.J.S.A. 47:1A-1</u> and <u>Burnett v. County of Bergen</u> , 198 <u>N.J.</u> 408 (2009).

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...a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy...*” (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 ...*A government record shall not include the following information which is deemed to be confidential for the purposes of [OPRA]... that portion of any document which discloses the social security number...of any person...*” (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 further mandates that:

“the personnel or pension records of any individual in the possession of a public agency...shall not be considered a government record and shall not be made available for public access, except that...data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.” N.J.S.A. 47:1A-10.

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.

The Complainant filed his Denial of Access Complaints asserting that the Custodian denied him access to the requested records. The Complainant, in two (2) separate OPRA requests, specifically requested to inspect the original college transcripts for multiple individuals. The Custodian certified that she cannot grant the Complainant access to view the original transcripts, but that she offered to provide the Complainant with copies of said transcripts, redacting each individual’s social security number, date of birth, individual grades and GPA. The Custodian certified that she denied access to the redacted portions described above pursuant to N.J.S.A. 47:1A-1 (“a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy”) and Burnett v. County of Bergen, 198 N.J. 408 (2009).

Because privacy interests are at issue here, the GRC asked both the Complainant and the Custodian to respond to balancing test questions so the Council could employ the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995). This test enables the Council to balance the Department of Education’s asserted need to protect the privacy of individuals against the Complainant’s asserted need to access the requested records.

In response to the balancing test questions, the Complainant stated that the requested records consist of college transcripts of individuals who have applied/received licensing from the New Jersey Department of Education. Candidates seeking New Jersey certification are required by State statute to submit original college transcripts with their applications for certification. Candidates must also meet grade point average (“GPA”) eligibility in order to receive certification. The Custodian confirmed this fact in her response to the balancing test questions, stating that the Office of Licensure and Credentials must verify that candidates for licensure have met all qualifications, including a minimum GPA requirement.

Additionally, the Complainant stated that original college transcripts, as a security feature, are imprinted with a water seal and a seal from the college issuing the document and that such security features cannot be seen on transcripts that have been copied. The Complainant asserted that viewing the original transcript is the only way to verify its authenticity.

Finally, the Complainant stated that he does not plan to redistribute the requested records or information which he is seeking via his OPRA requests. Moreover, the Complainant does not plan to use the information for any unsolicited contact of the individuals named in the government records.

The Custodian indicated that the Department always provides redacted transcripts to requestors because releasing the social security numbers, dates of birth, grades and GPA would violate the individuals' reasonable expectation of privacy. Specifically, the Custodian contended that disclosure of social security numbers and dates of birth presents a risk of identity or other financial fraud and abuse. The Custodian also asserted that the grades and GPA are exempt from public access under FERPA.

Also, the Custodian stated that the Office of Licensing staff protects the requested records by using password-protected computer software and archiving the hard copies. The Custodian stated that the Department is not aware of any express statutory mandate, articulated public policy, or other recognized public interest militating toward access of the rejected records. However, the Complainant asserted that No Child Left Behind, a federally mandated teacher qualification requirement, established guidelines enabling parents to seek and review the qualifications of any teaching staff member certified by the local certifying agency, the New Jersey Department of Education. However, the Complainant has not provided any specific evidence of said provisions, nor has the Complainant articulated that he is a parent qualifying under this alleged provision.

In order to determine whether the Custodian lawfully denied access to the requested records, or whether the Complainant's stated interest in the request outweighs the Custodian's denial, the Council will address each redacted item individually.

First, the Council will consider the Custodian's redaction to the social security numbers contained on the requested transcripts. OPRA at N.J.S.A. 47:1A-1.1, specifically mandates that social security numbers "are deemed confidential." In fact, both the New Jersey Supreme Court and the Council have routinely held that social security numbers should be redacted from government records. *See Burnett v. County of Bergen*, 198 N.J. 408, 423 (2009) (upholding the redaction of social security numbers from otherwise public land title records). *See also Baker v. New Jersey Civil Service Commission*, GRC Complaint No. 2009-253 (Interim Order dated October 2010)(holding that "[t]he Custodian shall only disclose this record with the Social Security Number redacted pursuant to N.J.S.A. 47:1A- 1.1").

Further, in Bonanno v. Garfield Board of Education, GRC Complaint No. 2006-62 (Interim Order dated July 2007), the complainant sought access to transcripts and certifications of teachers and administrators within the Garfield Board of Education. The Council ordered the custodian to disclose said records to the complainant. The custodian

redacted social security numbers from said transcripts and certifications. The Council held that “[t]he Custodian lawfully redacted the social security numbers from the requested certificates and transcripts pursuant to N.J.S.A. 47:1A-1.1.”

The Complainant’s argument that the only way to validate the authenticity of the requested transcripts is to view the originals, fails to override the longstanding policy that social security numbers are confidential. Therefore, the Custodian has lawfully redacted the social security numbers from the requested transcripts pursuant to N.J.S.A. 47:1A-1.1 and Burnett v. County of Bergen, 198 N.J. 408, 423 (2009). *See also Bonanno, supra*.

The Custodian also redacted dates of birth from the requested college transcripts. The Custodian contends that disclosing dates of birth presents a risk of identity or other financial fraud and abuse. The Complainant does not make any specific arguments regarding his need to obtain access to the dates of birth other than his generic argument that the only way to validate the authenticity of the requested transcripts is to view the originals.

While there is no specific provision in OPRA mandating that dates of birth are confidential and not subject to public access, the Custodian makes a compelling argument for the non-disclosure of said dates. Should the requested transcripts be disclosed unredacted as the Complainant requests, there is a potential harm for identity or financial fraud because the receiver of the records would be privy to an individual’s name, social security number and date of birth, which are all very important and personal pieces of information to a citizen’s identity.

Therefore, in balancing the Complainant’s need for the requested transcripts against the Custodian’s need to keep the dates of birth on said transcripts confidential, the Custodian’s need for privacy outweighs the Complainant’s need for access. Specifically, the Complainant’s argument that the only way to validate the authenticity of the requested transcripts is to view the originals, fails to override the potential harm for identity or financial fraud present with the disclosure of dates of birth. As such, the Custodian has lawfully denied access to the dates of birth pursuant to N.J.S.A. 47:1A-1.

The Custodian also redacted the individual grades and GPAs from each of the requested transcripts. In addition to privacy concerns, the Custodian cites to FERPA as a basis for the denial. However, the Custodian fails to provide any specific provision in FERPA which provides for the non-disclosure of individual grades.

In Schwarz v. New Jersey Department of Human Services, GRC Complaint No. 2004-30 (Interim Order dated June 2004), the custodian cited to the Health Insurance Portability and Accountability Act of 1996 (PL 104-91) (“HIPAA”) as the basis for a denial of access to records. The Council held that “[t]he Custodian has failed to explain with specificity the legal basis for the claimed non-disclosure of documents under HIPAA. The Custodian maintains the burden of proof that denial of access is authorized under law pursuant to N.J.S.A. 47:1A-6.”

The Council’s holding in Schwarz is applicable here because the Custodian cited to FERPA as a basis for the denial of access to grades and GPAs, but failed to provide

any further detail regarding the specific provision of FERPA which allows for the non-disclosure of grades and GPAs.

Therefore, the Custodian failed to bear her burden of proving a lawful denial of access, pursuant to N.J.S.A. 47:1A-6, to grades and GPAs contained on the requested transcripts under FEPPA because the Custodian failed to explain with specificity the legal basis for the claimed non-disclosure of documents under FEPPA. *See Schwarz, supra.*

However, FERPA is not the Custodian's only basis for the denial of access. The Custodian also raised privacy concerns. Further, the Council has previously ruled on the disclosure of individual grades contained on college transcripts of teachers and/or administrators. In Bonanno, supra, the Council held that:

“OPRA excludes personnel records from the definition of a government record with the exception of data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A. 47:1A-10. While employees and administrators of a [Board of Education] must meet specific experiential and educational requirements, individual grades included in a college transcript are not part of such requirement; the degree earned is such a requirement or qualification. Thus, the individual grades are part of an employee's personnel record and are exempt from public access under N.J.S.A. 47:1A-10.

Therefore, the Custodian's redaction of the individual grades contained in the requested transcripts are lawful pursuant to N.J.S.A. 47:1A-10.”

In these instant complaints, the Complainant stated, and the Custodian confirmed, the Department of Education verifies that the GPAs contained on the transcripts meet a minimum requirement in order to obtain official teacher and/or administrator licensure from the Department. The Custodian does not make a similar claim regarding the individual grades. Thus, the evidence of record provides that the GPAs contained on the transcripts are data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A. 47:1A-10. Teacher and administrator candidates cannot receive State certification from the Department of Education unless they meet a minimum GPA requirement. Without a State certification, these candidates cannot obtain employment with a public school district in New Jersey. *See Bonanno, supra*, (holding that because teachers and administrators must meet specific requirements for employment in a New Jersey school district, the documents requested by the Complainant, i.e. an employee's field of study, date certificates were issued, names of higher educational institutions, copies of certificates, diplomas, and transcripts, are considered government records pursuant to N.J.S.A. 47:1A-10 (information which disclose conformity with specific experiential, educational, or medical qualifications required for government employment) and therefore should be releasable to the public with appropriate redactions, if any).

Therefore, because the individual grades are not data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A. 47:1A-10, the Custodian's redaction of the individual grades contained in the requested transcripts is lawful pursuant to N.J.S.A. 47:1A-10.

However, because a minimum GPA is required to obtain licensure from the Department of Education, the GPA is data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A. 47:1A-10. As such, the GPAs contained on the requested transcripts are public and the Custodian unlawfully redacted the GPAs.

Nevertheless, the Complainant's OPRA requests specifically sought access to unfettered access to the *original* transcripts. Because the Custodian lawfully redacted the social security numbers, dates of birth and individual grades, the Custodian's unlawful redaction of GPAs does not amount to an unlawful denial of access to the requested records. The Custodian's denial of access to the *original* transcripts is lawful. Thus, the Council declines to order disclosure of the redacted transcripts revealing the GPAs since the Complainant's request is clear in that it seeks original documents and not copies.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's argument that the only way to validate the authenticity of the requested transcripts is to view the originals, fails to override the longstanding policy that social security numbers are confidential. Therefore, the Custodian has lawfully redacted the social security numbers from the requested transcripts pursuant to N.J.S.A. 47:1A-1.1 and Burnett v. County of Bergen, 198 N.J. 408, 423 (2009). *See also* Bonanno v. Garfield Board of Education, GRC Complaint No. 2006-62 (Interim Order dated July 2007).
2. In balancing the Complainant's need for the requested transcripts against the Custodian's need to keep the dates of birth on said transcripts confidential, the Custodian's need for privacy outweighs the Complainant's need for access. Specifically, the Complainant's argument that the only way to validate the authenticity of the requested transcripts is to view the originals, fails to override the potential harm for identity or financial fraud present with the disclosure of dates of birth. As such, the Custodian has lawfully denied access to the dates of birth pursuant to N.J.S.A. 47:1A-1.
3. The Custodian failed to bear her burden of proving a lawful denial of access, pursuant to N.J.S.A. 47:1A-6, to grades and GPAs contained on the requested transcripts under the Federal Education Rights Privacy Act ("FERPA") because the Custodian failed to explain with specificity the legal basis for the claimed non-disclosure of documents under FEPRPA. *See* Schwarz v. New

Jersey Department of Human Services, GRC Complaint No. 2004-30 (Interim Order dated June 2004).

4. Because the individual grades are not data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A. 47:1A-10, the Custodian's redaction of the individual grades contained in the requested transcripts is lawful pursuant to N.J.S.A. 47:1A-10.
5. Because a minimum GPA is required to obtain licensure from the Department of Education, the GPA is data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to N.J.S.A. 47:1A-10. As such, the GPAs contained on the requested transcripts are public and the Custodian unlawfully redacted the GPAs.
6. The Complainant's OPRA requests specifically sought access to unfettered access to the *original* transcripts. Because the Custodian lawfully redacted the social security numbers, dates of birth and individual grades, the Custodian's unlawful redaction of GPAs does not amount to an unlawful denial of access to the requested records. The Custodian's denial of access to the *original* transcripts is lawful. Thus, the Council declines to order disclosure of the redacted transcripts revealing the GPAs since the Complainant's request is clear in that it seeks original documents and not copies.

Prepared By: Dara L. Barry
Communications Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

December 11, 2012