



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

January 29, 2013 Government Records Council Meeting

Tom Rowan, Jr.
(On behalf of Express Times)
Complainant

Complaint No. 2011-347

v.

Warren Hills Regional School District (Warren)
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 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 the Complainant in this instant matter has not filed a Denial of Access Complaint pursuant to an OPRA dispute. Instead, the named request in the filed Denial of Access Complaint is a request under common law rights. Therefore, because the GRC is only empowered to adjudicate disputes within the scope of OPRA, the adjudication of this matter is outside of the GRC’s jurisdiction. Rosenblum v. Borough of Closter, No. A-1856-05T1, 2006 N.J. Super. LEXIS 1444, at 4-5 (App.Div. December 5, 2006); N.J.S.A. 47:1A-6; *See also Bent v. Twp. of Stafford Police Dep’t.*, 381 N.J. Super. 30, 38 (App. Div. 2005).

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 5, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Tom Rowan, Jr.¹
(On behalf of Express Times)
Complainant

GRC Complaint No. 2011-347

v.

Warren Hills Regional School District (Warren)²
Custodian of Records

Records Relevant to Complaint:

1. All e-mails sent and received between the former Athletic Director, Clegg “Buddy” Freund and Jennifer Reuber from March 1, 2011 to present.
2. All e-mails sent and received between Warren Hills Regional School District Superintendent Thomas Altonjy and Jennifer Reuber from March 1, 2011 to present.

Request Made: October 5, 2011³

Response Made: October 11, 2011

Custodian: Maureen Joyce

GRC Complaint Filed: November 9, 2011⁴

Background

November 9, 2011

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

- Complainant’s OPRA request dated October 5, 2011⁵
- Letter from the Custodian to the Complainant dated October 11, 2011⁶

The Complainant asserts that he has previously sent OPRA requests and Common Law Right to Know requests on September 22, 2011; September 27, 2011; and September 29, 2011. The Complainant argues that the Custodian has unlawfully denied

¹ No legal representation listed on record.

² Represented by Stephen R. Fogarty, Esq., of Fogarty and Hara (Fair Lawn, NJ).

³ The Complainant attaches additional requests that are not named in the filing of this instant complaint.

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

⁵ The Complainant’s request was sent to the Custodian via e-mail as two separate e-mails, each dated October 5, 2011.

⁶ The Complainant attaches additional documentation that is not relevant to the adjudication of this complaint.

access to his October 5, 2011 request under the terms of the Common Law Right to Know. The Complainant states that in a letter from the Custodian dated October 11, 2011, the Custodian denied his October 5, 2011 common law request on the grounds that the request is overly broad 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). In addition, the Complainant does not agree to mediate this complaint.

November 18, 2011

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

- Complainant's OPRA request dated October 5, 2011
- Letter from the Custodian to the Complainant dated October 11, 2011⁷

The Custodian certifies that none of the requested records were destroyed and that the school board's technology coordinator assisted with a search through the school district's e-mail database.

The Custodian argues that the Complainant's request is invalid because the request does not include the content or subject of the e-mails sought as is required under Elcavage v. West Milford Township, GRC Complaint Nos. 2009-07 and 2009-08 (March 2010) and Alterman v. Borough of Haledon, GRC Complaint No. 2010-117 (November 2010). The Custodian further asserts that the GRC is without jurisdiction to resolve the common law denial of access issues raised in regards to the denial of the Complainant's October 5, 2010 request pursuant to Rosenblum v. Borough of Closter, 2006 N.J. Super. Unpub. LEXIS 1444, 4-5 (App. Div. 2006) and Ciesla v. New Jersey Department of Health and Senior Services, GRC Complaint No. 2010-38 (May 2011).

Analysis

Whether the GRC has jurisdiction over the instant matter?

In the instant matter the Complainant asserts that he has been denied access to records by the Warrens Hills Regional School District on several occasions. However, the October 5, 2011 request that was denied by the Custodian on October 11, 2011, which serves as the named impetus for the filing of this Complaint, is a request that only asserts a common law right of access. In the October 5, 2011 request, the Complainant merely states, "[p]lease consider this e-mail a request under the terms of the Common Law Right to Know." At no place in the subject or body of the e-mailed request does the Complainant request access to records under OPRA.

⁷ The Custodian attaches additional documentation that is not relevant to the adjudication of this complaint. Tom Rowan, Jr. v. Warren Hills Regional School District (Warren), 2011-347 – Findings and Recommendations of the Executive Director 2

In the matter of Rosenblum v. Borough of Closter, No. A-1856-05T1, 2006 N.J. Super. LEXIS 1444, at 4-5 (App.Div. December 5, 2006), the complainant appealed from a final decision of the GRC that denied him access under OPRA. In appealing the GRC's decision, the complainant argued that he was entitled access to the requested records under common law. In denying the complainant's argument, the Court held that "the GRC is not empowered to adjudicate disputes concerning the scope of common law rights." *Id.* at 4. In addition, the Court stated that "[t]he Government Records Council is an agency 'within the Department of Community Affairs charged with adjudicating OPRA disputes' in the event the person seeking the record chooses not to file an action in Superior Court." *Id.*, citing Bent v. Twp. of Stafford Police Dep't., 381 N.J. Super. 30, 38 (App. Div. 2005) and N.J.S.A. 47:1A-6.

The Complainant in this instant matter has not filed a Denial of Access Complaint pursuant to an OPRA dispute. Instead, the named request in the filed Denial of Access Complaint is a request under common law rights. Therefore, because the GRC is only empowered to adjudicate disputes within the scope of OPRA, the adjudication of this matter is outside of the GRC's jurisdiction. Rosenblum, 2006 N.J. Super. LEXIS 1444, at 4; N.J.S.A. 47:1A-6. *See also* Bent, 381 N.J. Super. 38.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant in this instant matter has not filed a Denial of Access Complaint pursuant to an OPRA dispute. Instead, the named request in the filed Denial of Access Complaint is a request under common law rights. Therefore, because the GRC is only empowered to adjudicate disputes within the scope of OPRA, the adjudication of this matter is outside of the GRC's jurisdiction. Rosenblum v. Borough of Closter, No. A-1856-05T1, 2006 N.J. Super. LEXIS 1444, at 4-5 (App.Div. December 5, 2006); N.J.S.A. 47:1A-6; *See also* Bent v. Twp. of Stafford Police Dep't., 381 N.J. Super. 30, 38 (App. Div. 2005).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013