



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**

**December 18, 2012 Government Records Council Meeting**

Sabino Valdes  
Complainant

Complaint No. 2011-372

v.

NJ Department of Education  
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, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that because the Custodian bore her burden of proof that she responded in writing to the OPRA request in a timely manner granting the Complainant inspection of the Certificate on December 14, 2011, the Custodian has not unlawfully denied access to any records. N.J.S.A. 47:1A-6.

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 18<sup>th</sup> 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**

**Sabino Valdes<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-372**

v.

**New Jersey Department of Education<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Inspection of original Certificate of Determination (“Certificate”) filed by the New Jersey Department of Education (“DOE”) in reference to Docket No. 328-9/00.

**Request Made:** November 14, 2011

**Response Made:** December 8, 2011

**Custodian:** Maria Casale

**GRC Complaint Filed:** December 13, 2011<sup>3</sup>

**Background**

**November 14, 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.

**December 8, 2011**

Custodian’s response to the OPRA request. The Custodian responds in writing via Government Records Request Receipt (“Receipt”) to the Complainant’s OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such request.<sup>4</sup> The Custodian states that access to the requested record is granted. The Custodian states that the Complainant can inspect the responsive record on December 14, 2011 between 8:00 a.m. and 3:30 p.m.

**December 13, 2011**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:<sup>5</sup>

- OPRA request dated October 21, 2011.

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by DAG Susan Huntley, on behalf of the NJ Attorney General.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> The Custodian certifies in the SOI that she received the Complainant’s OPRA request on November 29, 2011.

<sup>5</sup> The Complainant attached additional records that are not relevant to the instant complaint.

- Receipt dated October 27, 2011.
- Complainant's OPRA request dated November 14, 2011.
- Certified Mail receipt dated November 16, 2011.
- Receipt dated December 1, 2011.

The Complainant states that in response to two (2) previous OPRA requests, DOE denied access to the Certificate. The Complainant states that pursuant to an OPRA request dated October 21, 2011, DOE granted inspection of the Certificate and advised that the Complainant schedule an appointment. The Complainant states that after numerous calls attempting to schedule an appointment, he received no reply.

The Complainant states that he thus resubmitted the pertinent OPRA request on November 14, 2011 advising that he sought inspection of the Certificate and wanted a response with an exact date on which he could inspect the record. The Complainant states that the Custodian never responded, but he did receive a Receipt on December 1, 2011 stating that his October 21, 2011 request was closed because the Complainant failed to schedule an appointment.

The Complainant contends that the Custodian violated OPRA by failing to respond to his November 14, 2011 OPRA request. N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. The Complainant asserts that DOE has not been truthful regarding the existence of the Certificate; nonetheless, the Custodian is required to allow the Complainant to inspect the record. The Complainant thus requests that the GRC order the Custodian to either allow the Complainant to inspect the Certificate or deny access to same pursuant to OPRA.

The Complainant does not agree to mediate this complaint.

**December 14, 2011**

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

**December 21, 2011**

E-mail from the Custodian to the GRC. The Custodian requests an extension of time until December 23, 2011 to submit the SOI.

**December 21, 2011**

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until December 23, 2011 to submit the SOI.

**December 23, 2011<sup>6</sup>**

Custodian's SOI with the following attachments:

- Receipt dated December 1, 2011.
- Receipt dated December 8, 2011.

---

<sup>6</sup> The Custodian did not certify to the search undertaken to locate the records responsive or whether any records responsive to the Complainant's OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

The Custodian certifies that she received the Complainant's OPRA request relevant to this complaint on November 29, 2011. The Custodian certifies that she responded in writing on December 8, 2011 granting access to the responsive records and advising that the Complainant could inspect same on December 14, 2011. The Custodian certifies that she called the Complainant on December 14, 2011 to confirm that he would review the record, but received no response. The Custodian certifies that the Complainant also never appeared to inspect the record.

### **January 9, 2012**

Complainant's Amended Denial of Access Complaint with the following attachments:<sup>7</sup>

- Track and Confirmation sheet dated November 7, 2011.<sup>8</sup>
- Envelope from DOE to the Complainant postmarked December 12, 2011.

The Complainant contends that the Custodian's SOI regarding her response to the Complainant's OPRA request is misleading. The Complainant acknowledges that on December 8, 2011, the Custodian scheduled an appointment for inspection on December 14, 2011; however, the Complainant contends that the Custodian did not send the Receipt in the mail until December 12, 2011. The Complainant asserts that he did not receive the Receipt until December 14, 2011. Further, the Complainant contends that he tried to contact the Custodian on December 14, 2011 and never received a response from the Custodian.

Moreover, the Complainant contends that his OPRA request sought inspection of an original copy of the Certificate. The Complainant notes that DOE has previously denied access to same advising that it only maintained a copy. The Complainant asserts that the Custodian herein has now granted access to the Certificate; however, the Complainant contends that the Custodian has not addressed whether the Certificate is original.

The Complainant contends that the Custodian is not being truthful regarding this matter. The Complainant reiterates his request for the GRC to order the Custodian to provide a definitive date on which the Complainant can inspect the responsive record.<sup>9</sup>

### **Analysis**

#### **Whether the Custodian unlawfully denied access to the requested Certificate?**

OPRA provides that:

---

<sup>7</sup> The Complainant also attached a copy of the GRC's envelope that contained a copy of the SOI.

<sup>8</sup> Although the printing date appears to predate the OPRA request, the contents show that a letter was delivered to the Complainant on December 14, 2011.

<sup>9</sup> The Complainant also notes that although the Custodian certified in the SOI that she simultaneously copied him on the SOI, the GRC actually forwarded same to the Complainant.

“...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.

The Complainant herein filed the instant complaint arguing that he did not receive a response to his November 14, 2011 OPRA request for inspection of the Certificate. The Complainant argued that the Custodian thus violated OPRA pursuant to N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i.

In the SOI, the Custodian certified that she received the Complainant’s OPRA request on November 29, 2011 and responded in writing on December 8, 2011 granting inspection of same, or the seventh (7<sup>th</sup>) business day following receipt of the OPRA request. The Custodian certified that she further notified the Complainant that he could inspect the Certificate on December 14, 2011. The Custodian certified that the Complainant never appeared to inspect the record.

The Complainant submitted an Amended Denial of Access on January 9, 2012 in which he acknowledged that he received the Custodian’s response on December 14, 2011.

The crux of this complaint is whether the Custodian timely responded to the OPRA request providing for inspection of the responsive Certificate. OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7)

business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.

The evidence herein clearly supports the conclusion that the Custodian timely responded granting access to a Certificate. Thus, the evidence of record supports the conclusion that the Custodian did not unlawfully deny access to any records.

Therefore, because the Custodian bore her burden of proof that she responded in writing to the OPRA request in a timely manner granting the Complainant inspection of the Certificate on December 14, 2011, the Custodian has not unlawfully denied access to any records. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Custodian bore her burden of proof that she responded in writing to the OPRA request in a timely manner granting the Complainant inspection of the Certificate on December 14, 2011, the Custodian has not unlawfully denied access to any records. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

November 20, 2012<sup>10</sup>

---

<sup>10</sup> 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.  
Sabino Valdes v. New Jersey Department of Education, 2011-372 – Findings and Recommendations of the Executive Director