



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

January 26, 2016 Government Records Council Meeting

Rotimi Owoh, Esq.
(On behalf of Delores Nicole Simmons)
Complainant

Complaint No. 2012-130

v.
West Windsor-Plainsboro Regional
School District (Mercer)
Custodian of Record

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 2016 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 the Council dismisses the complaint because the Complainant withdrew same via an e-mail to the GRC on December 16, 2015, based on a settlement between the parties. 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 26th Day of January, 2016

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: January 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 26, 2016 Council Meeting**

Rotimi Owoh, Esq.
(On behalf of Delores Nicole Simmons)¹
Complainant

GRC Complaint No. 2012-130

v.

**West Windsor-Plainsboro
Regional School District (Mercer)²**
Custodian of Records

Records Relevant to Complaint:

1. Inspection of the electronic images and metadata of the “native source” of the cancelled checks mentioned in the attached letters from Mr. Harrison dated November 7, 2011 and November 30, 2011.
2. Copies of the electronic images of the checks mentioned in the attached letter from Mr. Harrison dated December 20, 2011, sent directly from the pertinent bank.³
3. Inspection and metadata, to include hash marks, of the native source of the following:
 - a. The twelve (12) student records mentioned in paragraphs #14 and #15 of the attached certifications that was prepared by Mr. Harrison.
 - b. The attached student records that were filed in court by Mr. Harrison in connection with OR v. Victoria Kniewel, et al (MER-L-2293-07) and in connection with case number MER-L-2686-06.
4. The attached student records that Mr. Harrison’s law office sent to us in 2007.

Custodian of Record: Geraldine Hutner
Request Received by Custodian: April 15, 2012
Response Made by Custodian: April 18, 2012
GRC Complaint Received: April 27, 2012

Background

January 29, 2013 Council Meeting:

At its January 29, 2013 public meeting, the Council considered the January 22, 2013 Findings and Recommendations of the Executive Director and all related documentation

¹ The Complainant is an attorney who filed the subject OPRA request and subsequent Denial of Access Complaint on behalf of his client, O.R., a student.

² Represented by Eric L. Harrison, Esq. of Methfessel & Werbel (Edison, NJ).

³ The attached letter is dated December 19, 2011.

submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian did not unlawfully deny access to the records responsive to request item no. 2 because at the time of the Complainant's April 15, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format on a CD-ROM. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008). *See also* Wolosky v. Twp. of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012).
2. The Council should refer this matter to the Office of Administrative Law ("OAL") for a hearing to resolve the facts for the following reasons:
 - a) There are contested facts regarding the existence and availability of the metadata requested.
 - b) There are contested facts regarding whether the CD-ROM previously provided to the Complainant by the Custodian's Counsel contained the requested metadata.
 - c) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
 - d) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.

Procedural History:

On February 1, 2013, the Council distributed its Interim Order to all parties. On May 7, 2013, the complaint was transmitted to the OAL.

On December 16, 2015, the Complainant e-mailed the GRC, stating that he was withdrawing this complaint based on a settlement between the parties. On the same day, the GRC forwarded the Complainant's withdrawal letter to the OAL, requesting that OAL withdraw the matter from consideration and return the complaint. On December 28, 2015, the OAL returned this complaint to the GRC.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council dismiss the complaint because the Complainant withdrew same via an e-mail to the GRC on December 16, 2015, based on a settlement between the parties. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover
Executive Director

January 19, 2016



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

INTERIM ORDER

January 29, 2013 Government Records Council Meeting

Rotimi Owoh, Esq.
(On behalf of Delores Nicole Simmons)
Complainant

Complaint No. 2012-130

v.
West Windsor-Plainsboro Regional School District (Mercer)
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:

1. The Custodian did not unlawfully deny access to the records responsive to request item no. 2 because at the time of the Complainant’s April 15, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format on a CD-ROM. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). *See also* Wolosky v. Township of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012).
2. The Council should refer this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts for the following reasons:
 - a) There are contested facts regarding the existence and availability of the metadata requested.
 - b) There are contested facts regarding whether the CD-ROM previously provided to the Complainant by the Custodian’s Counsel contained the requested metadata.
 - c) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
 - d) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to



OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.

Interim Order 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 1, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Rotimi Owoh
(on behalf of Delores Nicole Simmons)¹
Complainant

GRC Complaint No. 2012-130

v.

West Windsor-Plainsboro Regional School District (Mercer)²
Custodian of Records

Records Relevant to Complaint:

1. Inspection of the electronic images and metadata of the “native source” of the cancelled checks mentioned in the attached letters from Mr. Harrison dated November 7, 2011 and November 30, 2011.
2. Copies of the electronic images of the checks mentioned in the attached letter from Mr. Harrison dated December 20, 2011, sent directly from the pertinent bank.³
3. Inspection and metadata, to include hash marks, of the native source of the following:
 - a. The twelve (12) student records mentioned in paragraphs #14 and #15 of the attached certifications that was prepared by Mr. Harrison.
 - b. The attached student records that were filed in court by Mr. Harrison in connection with OR v. Victoria Kniewel, et al (MER-L-2293-07) and in connection with case number MER-L-2686-06.
 - c. The attached student records that Mr. Harrison’s law office sent to us in 2007.

Request Made: April 15, 2012

Response Made: April 18, 2012

Custodian: Geraldine Hutner

GRC Complaint Filed: April 27, 2012⁴

Background

April 27, 2012

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

¹ The Complainant is an attorney who filed the subject OPRA request and subsequent Denial of Access Complaint on behalf of his client.

² Represented by Eric L. Harrison, Esq., of Methfessel & Werbel (Edison, NJ).

³ The attached letter is dated December 19, 2011.

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

- Complainant's OPRA request dated April 15, 2012, with attachments
- Custodian Counsel's response to the Complainant's request dated April 18, 2012, with attachments
- "Expert Report" prepared by Computer Data Forensic, LLC⁵

The Complainant states that he submitted his OPRA request on April 15, 2012 and received a written response from the Custodian's Counsel on April 18, 2012. Council's April 18, 2012 written response is summarized below:

1. Request item no. 1 – Counsel stated that the electronic images of cancelled checks previously provided by ACE Insurance and previously provided by Counsel have been provided on a CD-ROM in PDF format because they are maintained by ACE. Counsel stated that because the electronic images of the checks exist solely in PDF format, there exists no "site" where they may be inspected in any other format. Counsel states that this was reiterated at oral argument before Judge Jacobson last Friday and accepted by the Court, which ruled that the Complainant's prior identical request was satisfied by Counsel's production of paper copies of the checks and a CD-ROM containing the digital copies in PDF format.
2. The request for the pertinent bank to send electronic images of the checks directly to the Complainant is denied because it is not a request for production of public records.
3. There exists no "native source file/data" for the student records that Counsel has previously provided. Counsel stated that in most cases, he obtained paper records and scanned them to PDF records which were burned onto the CD-ROMs sent to the Complainant. Counsel stated that his office obtained PDF records directly from the District and burned them onto the CD-ROMs sent to the Complainant. Counsel stated that in both cases, all metadata available would be on the CD-ROMs. Counsel stated that there is nothing further.

The Complainant contends that Counsel's response above is not responsive to his request and is a denial of access. The Complainant states that one of the issues in this complaint is whether metadata of native source files is subject to public access under OPRA and the common law right of access.⁶ The Complainant states that because this matter appears to be a matter of first impression for the GRC, he has enclosed copies of court decisions regarding access to metadata from the States of Washington, Arizona and New York. The Complainant states that while these three (3) cases address the disclosure of metadata under OPRA and the Freedom of Information Act, he has also enclosed copies of court cases regarding access to metadata within the context of civil discovery.⁷

The Complainant states that he is not requesting access to the actual student records since redacted copies of the student records have already been previously

⁵ The Complainant attaches additional records which are not relevant to the adjudication of this complaint.

⁶ The GRC's authority is limited to adjudicating denials of access under OPRA. The GRC does not have the authority to address a requestor's common law right of access and will not do so here.

⁷ OPRA is a New Jersey State statute and does not apply to the States of Arizona, Washington or New York. Said cases relate to each State's own freedom of information statute, not OPRA. Additionally, OPRA and discovery are separate processes, which do not affect each other.

disclosed. The Complainant states that he is seeking the metadata of the native source files showing: when each of the student records were actually prepared in the native source, who prepared each of them, what time each of the documents were created, when each of the documents were modified, who modified each of them, whether each of the documents were altered, when each of the documents was/were last modified, the names of the custodians who have sent, received or made changes to each of the documents, their source path, source device, production path, hash value and time offset value. The Complainant states that he has enclosed an “expert report” from a computer company indicating that the CD-ROM the Complainant previously received from the Custodian’s Counsel does not contain any metadata.

Additionally, the Complainant states that the agency’s custodian of records has an obligation to obtain the requested records from the agency’s insurance agents and/or attorney pursuant to Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). The Complainant contends that the Custodian violated OPRA and the common law right of access by not providing inspection of the requested records.⁸ Finally, the Complainant states that he seeks the award of prevailing party attorney’s fees in this matter.

The Complainant does not agree to mediate this complaint.

May 29, 2012

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s OPRA request dated April 15, 2012, with attachments
- Custodian Counsel’s response to the Complainant’s request dated April 18, 2012, with attachments⁹

The Custodian certifies that she received the Complainant’s OPRA request on April 15, 2012. The Complainant certifies that item nos. 1-3 of the Complainant’ OPRA request seek records which the District does not possess. The Custodian certifies that said items relate to copies of checks which the Custodian’s Counsel obtained from ACE Insurance Company, the District’s liability insurer, in response to previous OPRA requests submitted by the Complainant. The Custodian certifies that to the extent the records existed, said records would be in the possession of Counsel or the insurance company. As such, the Custodian certifies that she asked Counsel to respond to the Complainant’s OPRA request.

The Custodian certifies that item no. 1 of the Complainant’s OPRA request sought on-site inspection of the electronic images of the cancelled checks mentioned in the letters attached to the request. The Custodian certifies that the District never maintained copies of such cancelled checks in any format, and that Counsel obtained said checks from ACE Insurance in response the Complainant’s prior OPRA request. The

⁸ The GRC’s authority is limited to adjudicating denials of access under OPRA. The GRC does not have the authority to address a requestor’s common law right of access and will not do so here.

⁹ The Custodian attaches additional records which are not relevant to the adjudication of this complaint. Rotimi Owoh (On behalf of Delores Nicole Simmons) v. West Windsor-Plainsboro Regional School District (Mercer), 2012-130 – Findings and Recommendations of the Executive Director

Custodian certifies that because the electronic images of the checks exist solely in PDF format, there exists no “site” where said checks may be inspected in any other format.

The Custodian certifies that item no. 2 of the Complainant’s OPRA request sought “the pertinent bank” to send directly to the Complainant copies of the electronic images of the checks mentioned in the letter attached to the request. The Custodian certifies that copies of the checks in question were obtained by Counsel from ACE Insurance, and the District had no relationship with, or knowledge of the identity of, “the pertinent bank” in question. Additionally, the Custodian certifies that Counsel denied the Complainant’s request because the public agency does not have any obligation under OPRA to request that the bank send records directly to the Complainant.

Regarding item no. 3 of the Complainant’s request, the Custodian certifies that in the course of discovery in the “John Doe” and “OR v. Kniewel” cases, Counsel obtained various unredacted student records in paper format, redacted the records to remove the names of students, and then scanned the records to be printed for filing with the Superior Court. The Custodian certifies that Counsel advised her that he also obtained some records in PDF format and provided said records directly to the Complainant. The Custodian certifies that all of said records were provided by Counsel to the Complainant in the “native format” possessed by Counsel, on a CD-ROM in December 2011. The Custodian certifies that because state and federal law prohibit the release of such documents in unredacted form, she entrusted Counsel to respond appropriately to the Complainant’s OPRA request, and Counsel provided said response on April 18, 2012. The Custodian certifies that there exists no “native source file/data” for the student records.

The Custodian certifies that she understands that OPRA has been interpreted by New Jersey courts and the GRC to require production of records in the format specified by the requestor when feasible. However, the Custodian certifies that Counsel determined that the records were not maintained in digital format from which metadata would be available. Accordingly, Counsel provided the records either in paper or PDF format.

The Custodian also certifies that the last date upon which 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 is not applicable because no records that may have been responsive to the request were ever destroyed.

The Custodian’s Counsel certifies that he responded to the Complainant’s OPRA request, on behalf of the Custodian, on April 18, 2012. Counsel certifies that the cancelled checks in question were sent to ACE by Bank of America, scanned by ACE and discarded. Counsel certifies that while Bank of America may have retained scanned copies, the bank is not a public agency under OPRA and thus the Custodian is not obligated to arrange public inspection of the records at the bank.

Additionally, Counsel certifies that in response to request item no. 1, he informed the Complainant that the electronic images of the cancelled checks had been previously

provided on CD-ROM in PDF format, and that because the images exist solely in PDF format, there exists no “site” where the checks may be inspected in any other format. Regarding request item no. 2, Counsel certifies that he denied this request because such is not a request for public records. Regarding request item no. 3, Counsel certifies that all of the records were previously provided to the Complainant on a CD-ROM on December 19, 2011. Counsel certifies that there exists no “native source file/data” for the student records because in most cases, the records obtained were paper records which were scanned to PDF documents and burned onto CD-ROM. Counsel certifies that the records from which the Complainant sought metadata were not maintained in a digital format from which metadata would be available and thus, could not be produced or inspected in their original format. Counsel certifies said records could only be provided in paper or PDF format.

June 3, 2012

The Complainant’s response to the Custodian’s SOI. The Complainant makes the following claims:¹⁰

1. No court or agency has ruled on this particular OPRA request made on behalf of Delores Nicole Simmons.
2. An “expert report” prepared by Axiana, LLC, makes clear that the extraction of metadata will not disclose personal identifying information about any of the individual students.
3. An “expert report” prepared by Computer Data Forensics, LLC, makes clear that the CD-ROM provided by Counsel does not contain any of the requested metadata. Delores Nicole Simmons has a right to on-site inspection and a right to extract the requested metadata pursuant to OPRA.

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.

¹⁰ For brevity, the GRC does not expand on the Complainant’s claims here.

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 stated that he submitted his OPRA request on April 15, 2012. The Custodian certified that she asked her legal counsel to respond to the Complainant’s request. The Custodian’s Counsel certified that he responded to the Complainant’s request in writing on April 18, 2012. Below is a summary of the Complainant’s request items and Counsel’s responses to each item:

Complainant’s Request Item	Counsel’s Response to Request
1. Inspection of the electronic images and metadata of the “native source” of the cancelled checks mentioned in the attached letters from Mr. Harrison dated November 7, 2011 and November 30, 2011.	The electronic images of cancelled checks previously provided by ACE Insurance and previously provided by Counsel have been provided on a CD-ROM in PDF format because they are maintained by ACE. Because the electronic images of the checks exist solely in PDF format, there exists no “site” where they may be inspected in any other format. This was reiterated at oral argument before Judge Jacobson last Friday and accepted by the Court, which ruled that the Complainant’s prior identical request was satisfied by Counsel’s production of paper copies of the checks and a CD-ROM containing the digital copies in PDF format
2. Copies of the electronic images of the checks mentioned in the attached letter from Mr. Harrison dated December 20, 2011, sent directly from the pertinent bank.	The request for the pertinent bank to send electronic images of the checks directly to the Complainant is denied because it is not a request for production of public records.
3. Inspection and metadata, to include hash marks, of the native source of the following: the twelve (12) student records mentioned in paragraphs #14 and #15 of the attached certifications that was prepared by Mr. Harrison; the	There exists no “native source file/data” for the student records that Counsel has previously provided. In most cases, he obtained paper records and scanned them to PDF records which were burned onto the CD-ROMs sent to the Complainant. Counsel stated that his office obtained PDF

<p>attached student records that were filed in court by Mr. Harrison in connection with OR v. Victoria Kniewel, et al (MER-L-2293-07) and in connection with case number MER-L-2686-06; and the attached student records that Mr. Harrison's law office sent to us in 2007.</p>	<p>records directly from the District and burned them onto the CD-ROMs sent to the Complainant. Counsel stated that in both cases, all metadata available would be on the CD-ROMs. Counsel stated that there is nothing further.</p>
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In item no. 2 of the Complainant's request, the Complainant sought records to be sent directly from "the pertinent bank." The Custodian's Counsel denied said request on the basis that said request is not a request for public records and asserted in the Custodian's SOI that the Custodian is not obligated to request such action from the bank. In the Complainant's OPRA request, the Complainant references a letter from Council dated December 20, 2011, which is actually dated December 19, 2011. In pertinent part, said letter states:

"[t]he electronic images of cancelled checks previously provided to me and previously provided to you by [my] office in response to your November 2011 OPRA request may be found on the enclosed CD-ROM in PDF format, as they are maintained by ACE."

In Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008), the Appellate Division held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. *Id.* at 617. The Appellate Division noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. *Id.* (citations omitted).

The Appellate Division's decision in Bart, however, turns upon the specific facts of that case. In the adjudication of the Denial of Access Complaint, the Council's decision noted the certification of the custodian that copies of the requested record were available at the Housing Authority's front desk upon simple verbal request by any member of the public; moreover, the complainant admitted that he was actually in possession of this record at the time of the OPRA request for the same record. Bart v. City of Paterson Housing Authority, GRC Complaint No. 2005-145 (May 2006).

Thus, based on the letter dated December 19, 2011, which the Complainant attached to his OPRA request, the evidence of record provides that at the time of the Complainant's April 15, 2012 OPRA request, the Complainant was already in possession of both hard copies and electronic copies on CD-ROM of the records responsive to request item no. 2.

In Wolosky v. Township of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012), an appeal of Wolosky v. Township of Sparta, GRC Complaint No. 2008-277 (November 2011), the court held that the GRC erred by ordering the Township

to provide the complainant with the requested audio recording in a specific WAV format. In said complaint, the Township did not maintain the audio recording in WAV format and instead offered to provide the complainant with a free download of the software needed to play the audio recording in the FTR Gold System format. The court specifically held that:

“[a]lthough the Custodian did not offer to provide Wolosky the recordings in the medium he requested, the Custodian nevertheless offered to provide him with the requested information in a ‘meaningful medium.’ The offered download of the software needed to play audio recordings in the [FTR] Gold System format was ‘meaningful’ because it afforded Wolosky *full access to the requested information.*” (Emphasis added).

Although the scenario in the Wolosky complaint is different than in the instant complaint, the court’s holding is applicable. In the instant complaint, the Complainant was already in possession of both hard copies and electronic copies of the requested check images. Thus, pursuant to Wolosky, *supra*, the Complainant had already been provided “full access” to the requested records.

Therefore, the Custodian did not unlawfully deny access to the records responsive to request item no. 2 because at the time of the Complainant’s April 15, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format on a CD-ROM. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart, *supra*. See also Wolosky, *supra*.

Regarding request item nos. 1 and 3, the Complainant sought the inspection of records, to include the metadata of the native source files. Similar to request item no. 2, it is evident from the Complainant’s OPRA request that he had already been provided with the records responsive to request item nos. 1 and 3 because he referenced prior letters regarding disclosure and even admits to being provided access to some of the requested records. However, the Complainant also seeks the metadata of the records responsive to request item nos. 1 and 3.

The disclosure of metadata is, in fact, a matter of first impression for the GRC. “Metadata” is defined as “data about data.”¹¹ In the Complainant’s Denial of Access Complaint, he states that he is seeking the metadata showing: when each of the student records were actually prepared in the native source, who prepared each of them, what time each of the documents were created, when each of the documents were modified, who modified each of them, whether each of the documents were altered, when each of the documents was/were last modified, the names of the custodians who have sent, received or made changes to each of the documents, their source path, source device, production path, hash value and time offset value.

¹¹ "Metadata." *WordNet*® 3.0. Princeton University. 08 Jan. 2013. <Dictionary.com <http://dictionary.reference.com/browse/metadata>>.

Based on the evidence of record, there are contested facts regarding the existence and availability of the metadata requested. Thus, the Council should refer this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts for the following reasons:

1. There are contested facts regarding the existence and availability of the metadata requested.
2. There are contested facts regarding whether the CD-ROM previously provided to the Complainant by the Custodian’s Counsel contained the requested metadata.
3. There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
4. The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney’s fee.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the records responsive to request item no. 2 because at the time of the Complainant’s April 15, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format on a CD-ROM. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). *See also* Wolosky v. Township of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012).
2. The Council should refer this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts for the following reasons:
 - a) There are contested facts regarding the existence and availability of the metadata requested.
 - b) There are contested facts regarding whether the CD-ROM previously provided to the Complainant by the Custodian’s Counsel contained the requested metadata.
 - c) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
 - d) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.

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Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013