



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**

**August 27, 2013 Government Records Council Meeting**

Anthony F. Argento  
Complainant

Complaint No. 2012-165

v.

Township of Bloomfield (Essex)  
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council (“Council”) considered the August 20, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian supplied the Complainant with unredacted copies of all of the attendance records as ordered by the Council within five (5) business days of receipt of the Council’s June 25, 2013 Order. Accordingly, the Custodian complied with the Council’s Order.
2. Although the Custodian failed to provide the requested attendance records and thus violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) by providing an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-(g), the Custodian ultimately provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 27th Day of August, 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: August 29, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
August 27, 2013 Council Meeting**

**Anthony F. Argento<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-165**

v.

**Township of Bloomfield (Essex)<sup>2</sup>  
Custodial Agency**

Records Relevant to Complaint:

1. Any and all annual attendance records summarizing the days worked and days taken off (sick, vacation, personal, etc.) which are manually filled out by the Bloomfield Police Department Services Division involving Bloomfield Police Lieutenant Richard Chiarello for calendar years 2000-2012.
2. Any training records relating to training on discrimination in the workplace for Lt. Chiarello.
3. Any training records relating to training on retaliation and/or the conscientious employee protection act in the workplace for Lt. Chiarello.
4. Any training records relating to training on harassment in the workplace or hostile work environments for Lt. Chiarello.

**Custodian of Record:** Louise M. Palagno

**Request Received by Custodian:** May 21, 2012

**Response Made by Custodian:** May 31, 2012

**GRC Complaint Received:** June 4, 2012<sup>3</sup>

**Background**

June 25, 2013 Council Meeting:

At its June 25, 2013 public meeting, the Council considered the June 18, 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, found that:

1. The Custodian unlawfully denied access to the requested attendance records because said records are considered payroll records, which are available for public access.

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

<sup>2</sup> Brian J. Aloia, Esq., Law Office of Brian J. Aloia, LLC, (Bloomfield, NJ).

N.J.S.A. 47:1A-10. See also *Burdick v. Franklin Township Board of Education (Hunterdon)*, GRC Complaint No. 2007-74 (Interim Order October 31, 2007). As such, the Custodian must disclose the 12 pages of responsive attendance records to the Complainant.

2. **The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
3. The Custodian lawfully denied access to the requested training records, request item nos. 2-4, on the basis that said records are exempt from public access as personnel records. N.J.S.A. 47:1A-10. The Custodian has borne her burden of proving that said records do not demonstrate compliance with specific experiential, educational or medical qualifications required for public employment. *See Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581 (2011).*
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On June 26, 2013 the Council distributed its Interim Order to all parties.

#### Compliance:

On July 1, 2013, the Custodian responded to the Council's Interim Order. The Custodian, through her designee, JoAnn Bruno, certified that five (5) business days from receipt of the Interim Order the Custodian provided the complainant, via e-mail, with the "attendance records" for the entire year[s] of 2000 through 2011. She further certified that the Complainant was provided with the requested "attendance record" for 2012 from January 1 through July 12. In addition, the Custodian advised that no redactions of the documents were required.

#### Analysis

#### Compliance

The custodian supplied the Complainant with unredacted copies of all of the attendance records as ordered by the Council within five (5) business days of receipt of the Council's June 25, 2013 Order. Accordingly, the Custodian complied with the Council's Order.

## **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “... [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian failed to provide the requested attendance records and thus, violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) by providing an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-(g), the Custodian ultimately provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian supplied the Complainant with unredacted copies of all of the attendance records as ordered by the Council within five (5) business days of receipt of the Council’s June 25, 2013 Order. Accordingly, the Custodian complied with the Council’s Order.
2. Although the Custodian failed to provide the requested attendance records and thus violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) by providing an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-(g), the Custodian

ultimately provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Dawn R. SanFilippo, Esq.  
Senior Counsel

Approved By: Brandon D. Minde, Esq.  
Executive Director

August 20, 2013



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

June 25, 2013 Government Records Council Meeting

Anthony F. Argento  
Complainant

Complaint No. 2012-165

v.

Township of Bloomfield (Essex)  
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council ("Council") considered the June 18, 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 unlawfully denied access to the requested attendance records because said records are considered payroll records, which are available for public access. N.J.S.A. 47:1A-10. See also Burdick v. Franklin Township Board of Education (Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). As such, the Custodian must disclose the 12 pages of responsive attendance records to the Complainant.
2. **The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
3. The Custodian lawfully denied access to the requested training records, request item nos. 2-4, on the basis that said records are exempt from public access as personnel records. N.J.S.A. 47:1A-10. The Custodian has borne her burden of proving that said records do not demonstrate compliance with specific experiential, educational or medical qualifications required for public employment. See Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581 (2011).

<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of June, 2013

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

Steven Ritardi, Esq., Acting Chair  
Government Records Council

**Decision Distribution Date: June 26, 2013**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 25, 2013 Council Meeting**

**Anthony F. Argento<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-165**

v.

**Township of Bloomfield (Essex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Any and all annual attendance records summarizing the days worked and days taken off (sick, vacation, personal, etc.) which are manually filled out by the Bloomfield Police Department Services Division involving Bloomfield Police Lieutenant Richard Chiarello for calendar years 2000-2012.
2. Any training records relating to training on discrimination in the workplace for Lt. Chiarello.
3. Any training records relating to training on retaliation and/or the conscientious employee protection act in the workplace for Lt. Chiarello.
4. Any training records relating to training on harassment in the workplace or hostile work environments for Lt. Chiarello.

**Request Made:** May 21, 2012

**Response Made:** May 31, 2012

**GRC Complaint Filed:** June 4, 2012<sup>3</sup>

**Background<sup>4</sup>**

**Request and Response:**

On May 21, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On May 31, 2012, the seventh (7<sup>th</sup>) business day following receipt of said request, JoAnn Bruno of the Municipal Clerk’s Office denied access to the requested attendance records on the basis that said records are personnel records exempt from public access. Ms. Bruno also denied access to the requested training records on the basis that said records are personnel records exempt from public access. Ms. Bruno asserted that specific educational qualifications required for public employment are public records, but stated that the

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

<sup>2</sup> Louise Palagano, Custodian of Records. Represented by Brian J. Aloia, Esq., of the Law Office of Brian J. Aloia, LLC (Bloomfield, NJ).

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

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

requested training records were not required for Lt. Chiarello's employment and thus did not have to be produced.

Denial of Access Complaint:

On June 4, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that the Custodian unlawfully denied access to the requested attendance records on the basis that said records are personnel records. The Complainant states that payroll records should be treated as public records under N.J.S.A. 47:1A-10. The Complainant states that the GRC held that attendance records are subject to public access under OPRA as "payroll records." See Weimer v. Township of Middletown, GRC Complaint No. 2004-22 (August 2005); Zucker v. Bergen County Improvement Authority, GRC Complaint No. 2008-68 (February 2009) and Burdick v. Franklin Township Board of Education, GRC Complaint No. 2007-74 (March 2009).

The Complainant also contends that the Custodian unlawfully denied access to Lt. Chiarello's training records on the basis that said training records are exempt from public access because they do not relate to training required for public employment. The Complainant claims the records are public because they relate to training conducted by the Bloomfield Police Department during Lt. Chiarello's employment with the Police Department.

Statement of Information:

On July 19, 2012, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that she received the Complainant's OPRA request on May 21, 2012, and responded on May 31, 2012. The Custodian certifies that the Complainant's OPRA request was denied based on reasoning provided by the Township Attorney. The Custodian certifies that 12 pages of annual attendance records for Lt. Chiarello dated 2000-2012 were denied as personnel records. N.J.S.A. 47:1A-10. The Custodian distinguishes Zucker, supra, in that the Council held the attendance records were considered payroll records because said records were used to calculate the employee's salary. Here, the Custodian certifies that the attendance records track the day an employee was at work, what days were designated as sick, personal or vacation days, but that the Township does not use these records to prepare payroll, as confirmed by the Finance Department. The Custodian also contends that the Council's holdings in Burdick, supra, and Weiner, supra, are not applicable here.

The Custodian also certifies that 6 pages of attendance sheets signed by Lt. Chiarello for in-house training regarding the Police Department's policy against a hostile work environment due to harassment or discrimination were also denied as personnel records. The Custodian certifies that the records demonstrating in-house training were not prerequisites for Lt. Chiarello's hiring with the Police Department.

## Analysis<sup>5</sup>

### Unlawful Denial of Access

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.

OPRA exempts from public access personnel records generally, but mandates that certain personnel records must be disclosed. Specifically, payroll records and data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment, shall be a government record. N.J.S.A. 47:1A-10.

### Request Item No. 1: Attendance Records

The Council addressed the issue of whether attendance records were releasable under OPRA in Burdick v. Franklin Township Board of Education (Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). The complainant requested attendance record of all fulltime employees and all members of the administration at Franklin Township School from July 1, 2005 to June 23, 2006. The custodian denied the complainant access to the requested attendance records because personnel records are considered confidential and not public records. The custodian also stated that in those cases where attendance records were made public, those attendance records were part of the employee’s payroll record. *See* Weimer v. Township of Middletown (Monmouth), GRC Complaint No. 2004-55 (August 2005) and Jackson v. Kean University (Union), GRC Complaint No. 2002-98 (February 2004). The Council ultimately held that “attendance records are considered payroll records which are subject to public access pursuant to N.J.S.A. 47:1A-10 and Weimer, *supra*.” The Council ordered the custodian to disclose the requested attendance records to the complainant.

The facts of this complaint are similar to Burdick, *supra*. The Complainant asserted in his Denial of Access Complaint that the requested attendance records are considered payroll records. Conversely, the Custodian argued in her SOI that because the attendance records are not used for payroll purposes, said records are not disclosable under N.J.S.A. 47:1A-10. However, the Council in Burdick, *supra*, held that attendance records are payroll records without distinguishing attendance records used for payroll purposes.

Therefore, the Custodian unlawfully denied access to the requested attendance records because said records are considered payroll records, which are available for public access. N.J.S.A. 47:1A-10. *See also* Burdick, *supra*. As such, the Custodian must disclose the 12 pages of responsive attendance records to the Complainant.

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<sup>5</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

## Request Item Nos. 2-4: Training Records

In Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581 (2011), the New Jersey Supreme Court interpreted the exception to the personnel records exemption that requires disclosure of records that “disclose conformity with specific experiential, educational or medical qualifications required for government employment.” N.J.S.A. 47:1A-10. The court stated that:

“...the exception does not authorize disclosure of any and all documents that evidence an employee's educational background or even that evidence an employee's participation in education pursuits generally. Rather, the Legislature chose to use the words ‘specific’ and ‘required’ in a manner that sharply limits the exceptions scope. Those words effectively narrow the mandate of disclosure because they make it plain that only *if there is a specific, or particular, education qualification that is a prerequisite for the job and only if the record demonstrated compliance that that specific requirement is it subject to being disclosed pursuant to OPRA.*” (Emphasis added). *Id.*

Here, the Complainant sought access to Lt. Chiarello's training records regarding discrimination in the workplace, the conscientious employee protection act, and harassment in the workplace, claiming that the records are public because the Police Department conducted the training. Conversely, the Custodian certified that the training records are personnel records since they do not demonstrate compliance with any prerequisites for Lt. Chiarello's job and thus do not fall under the OPRA exception.

Therefore, the Custodian lawfully denied access to the requested training records, request item nos. 2-4, on the basis that said records are exempt from public access as personnel records. N.J.S.A. 47:1A-10. The Custodian has borne her burden of proving that said records do not demonstrate compliance with specific experiential, educational or medical qualifications required for public employment. See Kovalcik, supra.

## **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the requested attendance records because said records are considered payroll records, which are available for public access. N.J.S.A. 47:1A-10. See also Burdick v. Franklin Township Board of Education (Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). As such, the Custodian must disclose the 12 pages of responsive attendance records to the Complainant.

2. **The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
3. The Custodian lawfully denied access to the requested training records, request item nos. 2-4, on the basis that said records are exempt from public access as personnel records. N.J.S.A. 47:1A-10. The Custodian has borne her burden of proving that said records do not demonstrate compliance with specific experiential, educational or medical qualifications required for public employment. *See Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581 (2011).*
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Dara L. Barry  
Communications Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

June 18, 2013

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<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.