



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 O.R.)
Complainant

Complaint No. 2012-167

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 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.

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 O.R.)¹
Complainant**

GRC Complaint No. 2012-167

v.

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

Records Relevant to Complaint: Inspection and extraction of the following:³

1. Metadata from the native source file on both the “SASI” and “GIF” systems related to the attached discipline report (Incident No. 1030000697) the Custodian’s Counsel filed in Superior Court in 2008.
2. Metadata from the native source file on both the “SASI” and “GIF” systems related to the attached discipline report (Incident No. 1030000658) the Custodian’s Counsel filed in Superior Court in 2008.

Custodian of Record: Geraldine Hutner
Request Received by Custodian: May 2, 2012
Response Made by Custodian: May 7, 2012
GRC Complaint Received: June 7, 2012

Background

February 26, 2013 Council Meeting:

At its February 26, 2013 public meeting, the Council considered the February 19, 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 it “should refer this matter to the Office of Administrative Law [(“OAL”)] for a hearing to resolve the facts for the following reasons:

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 Complainant requested additional records that are not at issue in this complaint.

1. There are contested facts regarding the existence and availability of the metadata requested.
2. 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 27, 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

February 26, 2013 Government Records Council Meeting

Rotimi Owoh (on behalf of O.R.)
Complainant

Complaint No. 2012-167

v.

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

At the February 26, 2013 public meeting, the Government Records Council (“Council”) considered the February 19, 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 Council should refer this matter to the Office of Administrative Law 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. 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 26th Day of February, 2013

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

Robin Berg Tabakin, Esq., Chair
Government Records Council

Decision Distribution Date: February 27, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2013 Council Meeting**

**Rotimi Owoh
(on behalf of O.R.)¹
Complainant**

GRC Complaint No. 2012-167

v.

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

Records Relevant to Complaint: Inspection and extraction of the following:³

1. Metadata from the native source file on both the “SASI” and “GIF” systems related to the attached discipline report (Incident No. 1030000697) the Custodian’s Counsel filed in Superior Court in 2008.
2. Metadata from the native source file on both the “SASI” and “GIF” systems related to the attached discipline report (Incident No. 1030000658) the Custodian’s Counsel filed in Superior Court in 2008.

Request Made: May 1, 2012

Response Made: May 7, 2012

Custodian: Gerri Hutner

GRC Complaint Filed: June 7, 2012⁴

Background

June 7, 2012

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

- Complainant’s OPRA request dated May 1, 2012 (with attachments).
- Letter from the Custodian’s Counsel to the Complainant dated May 7, 2012 (with attachments).
- Consent of Ms. Melanie Doering dated May 7, 2012.

The Complainant states that he submitted an OPRA request to the West Windsor Plainsboro Regional School District (“District”) on May 1, 2012. The Complainant states

¹ No legal representation listed on record.

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

³ The Complainant requested additional records that are not at issue in this complaint.

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

that the Custodian's Counsel responded in writing via e-mail on May 7, 2012 denying inspection and extraction of the responsive metadata. Counsel's responses to the Complainant's itemized requests are detailed below:

1. Attached is the original GIF file involving the Complainant son's disciplinary incident (Incident No. 1030000697) created by Mr. Rick Cave ("Mr. Cave"), Director of Information Technology, on January 29, 2008 and e-mailed to Counsel on February 5, 2008. The SASI system, which the District no longer uses, is a file management system and not a "native file source." Thus, no metadata exists to be extracted from a record in any form beyond the attached GIF files.
2. Because the disciplinary report (Incident No. 1030000658) involves another student's disciplinary incident, access to an unredacted copy of the GIF file is exempt from disclosure pursuant to the Pupil Records Act ("PRA") and Federal Education Rights and Privacy Act ("FERPA"). The SASI system, which the District no longer uses, is a file management system and not a "native file source." Thus, no metadata exists to be extracted from a record in any form beyond the attached GIF files.

The Complainant contends that at issue here is whether metadata of native source files are subject to disclosure under OPRA and common law.⁵ The Complainant asserts that since this issue appears to be one of first impression for the State, Complainant requests that the GRC review five (5) cases from other jurisdictions.⁶ The Complainant states that he is interested in the metadata showing when the records were prepared in their native source, who prepared them, what time the records were created, modified (if any), the identity of the persons making the modifications (if any), source path, source device, production path, hash value and time offset value.

The Complainant further contends that because he has parental consent to view student records, the privacy exemptions provided for in FERPA do not apply. The Complainant asserts that to the contrary, both FERPA and *N.J.A.C. 6A:32-7.5* allows the Complainant the right to inspect student records.

The Complainant requests that the GRC order the Custodian to the provide inspection and extraction of the responsive metadata. The Complainant further requests that the Complainant be found to be a prevailing party subject to an award of reasonable attorney's fees. *N.J.S.A. 47:1A-6*.

The Complainant does not agree to mediate this complaint.

July 2, 2012

Custodian's Statement of Information ("SOI") with the following attachments:⁷

⁵ 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.

⁶ The Complainant cites to court decisions from the states of Arizona, New York, Washington and Kansas regarding access to metadata.

⁷ The Custodian attached additional records that are not relevant to the adjudication of this Denial of Access Complaint.

- Complainant's OPRA request dated May 1, 2012 (with attachments).
- Letter from the Custodian's Counsel to the Complainant dated May 7, 2012 (with attachments).
- E-mail from the Complainant to the Custodian dated May 8, 2012.
- E-mail from the Custodian's Counsel to the Complainant dated May 8, 2012.
- E-mail from the Complainant to the Custodian's Counsel dated May 8, 2012.
- E-mail from the Custodian's Counsel to the Complainant dated May 8, 2012.

The Custodian certifies that her search for the requested records included conferring with Counsel and Mr. Cave to confirm that Counsel's response to the Complainant was accurate. The Custodian certifies that upon confirmation that Counsel's responses were accurate, she approved same for dissemination to the Complainant.

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

The Custodian certifies that she received the Complainant's OPRA request on May 2, 2012. The Custodian certifies that the Custodian's Counsel responded in writing on May 7, 2012.

Counsel submits a legal certification in support of his actions regarding this complaint.⁸ Counsel certifies that he responded to the Complainant on behalf of the Custodian on May 7, 2012.

Counsel certifies that regarding the Complainant's OPRA request Item No. 1, he provided an unredacted GIF file. Counsel certifies that the record attached to the OPRA request was a GIF file that Mr. Cave e-mailed him as part of a number of GIF files. Counsel certifies that he personally redacted and submitted to the Superior Court in 2008 as part of the District's defense in John Doe v. West Windsor Plainsboro School District (MER-L-2316-06). Counsel certifies that he previously redacted same pursuant to FERPA and the PRA. Counsel certifies that he searched the GIF files, located the responsive record and provided same to the Complainant on May 7, 2012. Counsel certifies that he further advised the Complainant that the SASI system, which was no longer in use, was a file management system and not a "native file source," thus, no metadata for the SASI system exists.

Counsel certifies that regarding the Complainant's OPRA request Item No. 2, he denied access to an unredacted copy of the responsive GIF file pursuant to FERPA and the PRA. Counsel certifies that the GIF file attached to the OPRA request was handled similar to how he handled the GIF image above. Counsel further certifies that he advised the Complainant that the SASI system, which was no longer in use, was a file management system and not a "native file source," thus, no metadata for the SASI system exists.

⁸ Counsel includes a detailed history of the interactions between the Complainant and District that have spanned from 2005 to the present.
Rotimi Owoh (on behalf of O.R.) v. West Windsor Plainsboro Regional School District (Mercer), 2012-167 – Findings and Recommendations of the Executive Director 3

Counsel certifies that on May 8, 2012, he received an e-mail from the Complainant attaching a signed parental consent form authorizing unredacted disclosure of the second GIF file. Counsel certifies that he searched his GIF files created in 2008 and provided by Mr. Cave, but was unable to locate the GIF file corresponding to the record attached to the OPRA request. Counsel certifies that no GIF file existed because Ms. Donna Gibbs-Nini (“Ms. Gibbs-Nini”), former Assistant Principal, suspended the student for “threats” and not “possession of weapon.” Counsel certifies that this is important because as part of previous litigation in John Doe, Counsel only sought information from the SASI system relating to reports of violence and vandalism that were submitted to the New Jersey Department of Education (“DOE”) pursuant to its “Electronic Violence and Vandalism Reporting System” (“EVVRS”). Counsel certifies that because Incident No. 1030000658 was recorded as a “threat,” it was not reported to DOE through the EVVRS system; thus, no GIF or other electronic file containing the requested metadata.

Counsel certifies that he thus responded to the Complainant on the same day acknowledging receipt of the parental consent form. Counsel certifies that he further advised that he reviewed all GIF files provided to him by Mr. Cave on February 5, 2008 and found that he made a mistake in his May 7, 2012 response. Counsel certifies that he advised the Complainant that two (2) GIF files regarding the same student were provided by Mr. Cave, but that neither corresponded to the incident with scissors. Counsel certifies that he advised that if the Complainant wished to obtain these two (2) GIF files, Counsel would consider the Complainant’s OPRA request amended and provide same via e-mail.

Counsel certifies that the Complainant responded disputing that Counsel unlawfully denied access to the requested metadata and that the Complainant intended to enforce his right to on-site inspection and extraction. Counsel certifies that he responded via e-mail confirming that the Complainant declined to accept the records and that no further response would be forthcoming.

Counsel certifies that he 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. Counsel argues that here, the Complainant demanded access to an electronic information storage system that the District no longer uses to extract metadata relating to two (2) incident reports that he received in redacted form four (4) years ago. Counsel again certifies that the SASI system is not a “native source” file; therefore, there are no electronic records responsive with associated metadata. Counsel certifies that of the GIF files Mr. Cave provided Counsel in 2008, one (1) matched the record attached to the OPRA request and none matched the other record. Counsel certifies that the District cannot provide a record it does not have and further has no obligation to create same. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 537 (App. Div. 2005).

July 5, 2012

Letter from the Complainant to the GRC attaching the following:

- Ms. Gibbs-Nini’s certification regarding Owoh v. West Windsor Plainsboro Regional School District, MER-L-2686-06 dated November 7, 2007.

- Custodian’s certification regarding Owoh (undated).
- Custodian’s certification regarding Owoh dated June 4, 2008.
- Custodian Counsel’s certification regarding GRC Complaint No. 2012-91 dated April 26, 2012.
- Custodian’s certification regarding GRC Complaint No. 2012-91 dated April 29, 2012.
- Letter from the Custodian’s Counsel to the Complainant dated May 1, 2012.
- Complainant’s OPRA request dated May 1, 2012.
- Letter from the Custodian’s Counsel to the Complainant dated May 7, 2012 (with attachments).
- E-mail from the Complainant to the Custodian dated May 8, 2012.
- E-mail from the Custodian’s Counsel to the Complainant dated May 8, 2012.
- E-mail from the Complainant to the Custodian’s Counsel dated May 8, 2012.
- E-mail from the Custodian’s Counsel to the Complainant dated May 8, 2012.
- “SASI Basic Applications Guide” released December, 2006.
- “Request for Service” prepared by Mr. Henry Dodenhoff of Computer Data Forensics, LLC.
- “Metadata” prepared by Mr. Tino Kyprianou of Axiana, LLC.

The Complainant first notes that his OPRA request sought “on-site inspection” which the Custodian’s Counsel did not grant. The Complainant notes that after receiving this response, the Complainant responded on May 8, 2012 emphasizing that he sought “on-site inspection” and again was not granted same. The Complainant argues that OPRA provides for his right to inspect the responsive records in light of FERPA and *N.J.A.C. 6A:32-7.5*. The Complainant contends that because Counsel did not grant inspection of the records, Counsel violated OPRA.

The Complainant contends that Counsel did not have to create any records in order to respond to the subject OPRA request. The Complainant asserts that in the Custodian’s certification regarding GRC Complaint No. 2012-91, she certifies that Counsel had in his possession unredacted copies of several GIF files.⁹ Moreover, the Complainant asserts that in Ms. Gibbs-Nini’s certification regarding Owoh, she certified that activities warranting discipline or suspension were inputted into the SASI system without use of an interim paper form. The Complainant also asserts that in Counsel’s certification regarding GRC Complaint No. 2012-91, Counsel acknowledges that the Complainant is seeking metadata that Counsel believes does not exist. The Complainant disputes Counsel’s certification, noting that in a letter to the Complainant dated May 1, 2012, Counsel advised the Complainant that there is no retention schedule for the SASI and that there is no question the electronically stored records still exist.

The Complainant states that attached are two reports from computer experts that support the Complainant’s argument that the responsive metadata exists and that he should be granted access to inspect same. The Complainant contends that these reports made it clear that metadata is generally not visible to the human eye, which means that although the Custodian’s Counsel cannot see the data, it likely exists. The Complainant

⁹ The certification does not identify which specific files Counsel had in his possession.
 Rotimi Owoh (on behalf of O.R.) v. West Windsor Plainsboro Regional School District (Mercer), 2012-167 – Findings and Recommendations of the Executive Director 5

asserts that although both the Custodian and Counsel have been silent regarding the existence of the GIF files, he is ready to utilize these experts to inspect the relevant metadata from both systems.¹⁰

The Complainant contends that he has a right to on-site inspection of the responsive records to determine:

- Whether the records are stored as GIF files.
- Whether the records are stored in the SASI system.
- Whether the SASI computer database is an electronic “management system.”
- Whether the records were stored on Ms. Gibbs-Nini’s computer.
- Whether the records were stored in the principal’s office.
- Whether the records were stored on Mr. Cave’s computer, the Custodian’s computer and/or Counsel’s computer.

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.

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.

¹⁰ The Complainant further notes that although he has made other OPRA requests in which he sought the records at issue herein, no court or other agency has ruled on this specific OPRA request. Rotimi Owoh (on behalf of O.R.) v. West Windsor Plainsboro Regional School District (Mercer), 2012-167 – Findings and Recommendations of the Executive Director 6

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 this complaint arguing that the Custodian should have allowed for inspection and extraction of metadata related to the two (2) reports. The Custodian's Counsel certified in the SOI that no metadata existed. On July 5, 2012, the Complainant subsequently submitted "expert reports" from computer experts supporting that the responsive metadata exists and can be located.

Based on the evidence of record, there are contested facts regarding the existence and availability of the records requested. The Custodian's Counsel has certified that the requested metadata does not exist. However, the Complainant submitted expert reports that could possibly refute Counsel's certification.

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.

Thus, 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. 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 the Council should refer this matter to the Office of Administrative Law for a hearing to resolve the facts for the following reasons:

¹¹ "Metadata." *WordNet® 3.0*. Princeton University. 08 Jan. 2013. <[Dictionary.com http://dictionary.reference.com/browse/metadata](http://dictionary.reference.com/browse/metadata)>. Rotimi Owoh (on behalf of O.R.) v. West Windsor Plainsboro Regional School District (Mercer), 2012-167 – Findings and Recommendations of the Executive Director 7

1. There are contested facts regarding the existence and availability of the metadata requested.
2. 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.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

February 19, 2013