



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**

**July 23, 2013 Government Records Council Meeting**

Karen Banda  
Complainant

Complaint No. 2012-191

v.

Township of Bloomfield (Essex)  
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council (“Council”) considered the July 16, 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 comply with the Council’s May 28, 2013 Interim Order requiring that the Custodian provide (9) copies of the unredacted records; nine (9) copies of the redacted records, a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, within five (5) business days from receipt of the Council’s Interim Order
2. The *in camera* examination reveals the Custodian has lawfully denied access to, or redacted portions of, the records disclosed to the Complainant for the reasons set forth in the annexed Index.

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 23 Day of July 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: July 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
July 23, 2013 Council Meeting**

**Karen Banda<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-191**

v.

**Township of Bloomfield (Essex)  
Custodian of Records**

**Records Relevant to Complaint:** All Board of Health closed session minutes and notes from 2009 through 2011.

**Custodian of Record:** Louise M. Palagano<sup>2</sup>  
**Request Received by Custodian:** April 25, 2012  
**Response Made by Custodian:** May 3, 2012  
**GRC Complaint Received:** June 21, 2012

**Records Submitted for *In Camera* Examination:**

Board of Health closed session minutes from the following meetings: 1) March 19, 2009; 2) April 16, 2009; 3) June 18, 2009; 4) August 20, 2009; 5) September 17, 2009; 6) January 14, 2010; 7) February 18, 2010; 8) June 10, 2010; 9) September 16, 2010; 10) December 16, 2010; 11) June 16, 2011; and 12) August 18, 2011.

**Background**

At its May 28, 2013 public meeting, the Government Records Council (the “Council”) considered the May 21, 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 GRC must conduct an *in camera* review of the following closed session minutes: March 19, 2009, April 16, 2009, June 18, 2009, August 20, 2009, September 17, 2009, January 14, 2010, February 18, 2010, June 10, 2010, September 16, 2010, December 16, 2010, June 16, 2011 and August 18, 2011, to determine the validity of the Custodian’s assertion that these closed session minutes contain personnel material, ongoing litigation matters, and attorney client privilege material. See Paff v.

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

<sup>2</sup> Ricci & Fava, L.L.C. 428 Notch Road, Woodland Park, New Jersey 07424. Counsel at the time of the filing of the Complaint was Brian Aloia, Esq. The Law Office of Brian J. Aloia, LLC, 2 Broad Street Suite 407, Bloomfield, NJ 07003.

NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), N.J.S.A. 47:1A-10, N.J.S.A. 10:4-12, and N.J.S.A. 47:1A-1.1.

2. **The Custodian must deliver<sup>3</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see #1 above), nine (9) copies of the redacted records, a document or redaction index<sup>4</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>5</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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.

The Council distributed its Interim Order to all parties on June 3, 2013. On June 11, 2013 the Custodian responded to the Council's Interim Order. The Custodian provided the requisite copies of both the redacted and unredacted minutes together with a redaction index (the "Index").

### Analysis<sup>6</sup>

#### Compliance

The Council's May 28, 2013 Order required the Custodian to provide the GRC with unredacted and redacted records, certifications of the Custodian and a document or redaction index ("Index") within five (5) days of receipt of their May 28, 2013 Interim order. The GRC received the above-referenced documents from the Custodian<sup>7</sup>, in a timely manner, on June 11, 2013.

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<sup>3</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>4</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>5</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>6</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.

<sup>7</sup> JoAnn Bruno, an employee of the township of Bloomfield's clerk's office submitted a certification at the direction of the Municipal Clerk and Records Custodian, Louise M. Palagano. In addition, Karen Lore, Director of Health & Human Services, filed a certification. Ms. Bruno together with Ms. Lore are collectively referred to as (the "Custodian.")

## **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.

The Custodian, in support of the redactions she made, cites to N.J.S.A. 47:1A-1.1 (a government record shall not include any record within the attorney-client privilege) and N.J.S.A. 47:1:A-10 (personnel, pension records, and grievances, shall not be considered a public record). In addition, the custodian cites to N.J.S.A. 10:4-12, without citing to specific subparts. A reading of the Index together with the Custodian’s handwritten notations on the redacted copies of the documents demonstrates that she relied on N.J.S.A. 10:4-12(b) (a public body may exclude from that portion of a meeting at which the public body discusses: (7) pending or anticipated litigation, and/or (8) matters involving employment, including employment terms, evaluation of performance, termination etc.).

The GRC conducted an *in camera* examination of the submitted record. The GRC reviewed the certifications of JoAnn Bruno and Karen Lore, the redacted and unredacted minutes and the Index. The Custodian provided valid legal basis for each of the redactions.

Thus, the Custodian lawfully denied access to the redactions in the responsive records.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did comply with the Council’s May 28, 2013 Interim Order requiring that the Custodian provide (9) copies of the unredacted records; nine (9) copies of the redacted records, a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, within five (5) business days from receipt of the Council’s Interim Order
2. The *in camera* examination reveals the Custodian has lawfully denied access to, or redacted portions of, the records disclosed to the Complainant for the reasons set forth in the annexed Index.

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

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

July 16, 2013



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

May 28, 2013 Government Records Council Meeting

Karen Banda  
Complainant

Complaint No. 2012-191

v.

Township of Bloomfield (Essex)  
Custodian of Record

At the May 28, 2013 public meeting, the Government Records Council ("Council") considered the May 21, 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 GRC must conduct an *in camera* review of the following closed session minutes: March 19, 2009, April 16, 2009, June 18, 2009, August 20, 2009, September 17, 2009, January 14, 2010, February 18, 2010, June 10, 2010, September 16, 2010, December 16, 2010, June 16, 2011 and August 18, 2011, to determine the validity of the Custodian's assertion that these closed session minutes contain personnel material, ongoing litigation matters, and attorney client privilege material. See Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), N.J.S.A. 47:1A-10, N.J.S.A. 10:4-12, and N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see #1 above), nine (9) copies of the redacted records, a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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.

<sup>1</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>3</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."

Interim Order Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of May, 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: June 3, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 28, 2013 Council Meeting**

**Karen Banda<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-191**

v.

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

**Records Relevant to Complaint:** All Board of Health closed session minutes and notes from 2009 through 2011.

**Request Made:** April 25, 2012

**Response Made:** May 3, 2012

**GRC Complaint Filed:** June 21, 2012<sup>3</sup>

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

**Request and Response:**

On April 25, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On May 3, 2012, the sixth (6<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing requesting an extension of time to respond until May 14, 2012. On May 14, 2012, the Custodian provided forty-six (46) pages of closed session minutes responsive to the OPRA request. The Custodian states that the Health Department provided the minutes and that the Acting Director of the Health Department made redactions to certain portions of the closed session minutes and has indicated the lawful basis for each redaction.<sup>5</sup>

**Denial of Access Complaint:**

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

<sup>2</sup> JoAnn Bruno, Custodian of Records. The Custodian at the time of the Complainant’s OPRA request and Statement of Information was Louise Palagano. Represented by Brian 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.

<sup>5</sup> The closed session minutes dated January 15, 2009, May 21, 2009, November 19, 2009, March 18, 2010, April 15, 2010, May 20, 2010, October 21, 2010, November 18, 2010, January 20, 2011, February 17, 2011, April 28, 2011, and May 19, 2011 were provided without redactions and thus not in dispute in the instant complaint.



On June 21, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the closed session minutes she received were heavily redacted and in some cases, no information was released. The Complainant contends that once an action has been taken, even regarding personnel issues, those actions are subject to public access even if the employee’s name is redacted.

Statement of Information:

On June 26, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she provided copies of closed session minutes from 2009 through 2011. The Custodian provides copies of the closed session minutes along with the SOI.

The Custodian indicates that the closed session minutes dated March 19, 2009, April 16, 2009, June 18, 2009, August 20, 2009, January 14, 2010, February 18, 2010, December 16, 2010, June 16, 2011 and August 18, 2011, were redacted for personnel issues. The Custodian also indicates that the closed session minutes dated April 16, 2009, August 20, 2009, and September 17, 2009, were redacted for ongoing litigation matters. Lastly, the Custodian indicates that the closed session minutes dated March 19, 2009, September 16, 2010 and August 18, 2011, were redacted for attorney client privilege information.

Analysis<sup>6</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.

In Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the Complainant appealed a final decision of the GRC<sup>7</sup> in which the GRC dismissed the complaint by accepting the Custodian’s legal conclusion for the denial of access without further review. The court stated that:

“OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records...When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.”

The court also stated that:

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<sup>6</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.

<sup>7</sup> Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).

“[t]he statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7f. This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.”

Further, the court stated that:

“[w]e hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal...There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7f, which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.”

The Custodian certified in the SOI that she provided the Complainant with redacted copies of the requested closed session minutes. The Custodian asserted that the closed session minutes dated March 19, 2009, April 16, 2009, June 18, 2009, August 20, 2009, January 14, 2010, February 18, 2010, December 16, 2010, June 16, 2011 and August 18, 2011, were redacted for personnel issues. The Custodian also asserted that the closed session minutes dated April 16, 2009, August 20, 2009, and September 17, 2009, were redacted for ongoing litigation matters. Lastly, the Custodian asserted that the closed session minutes dated March 19, 2009, September 16, 2010 and August 18, 2011, were redacted for attorney client privilege information. Conversely, the Complainant argued in her Denial of Access Complaint that the closed session minutes she received were heavily redacted and that once an action has been taken, even regarding personnel issues, the actions and reasons are subject to public access even if the employee’s name is redacted.

Therefore, the GRC must conduct an *in camera* review of the following closed session minutes: March 19, 2009, April 16, 2009, June 18, 2009, August 20, 2009, September 17, 2009, January 14, 2010, February 18, 2010, June 10, 2010, September 16, 2010, December 16, 2010, June 16, 2011 and August 18, 2011, to determine the validity of the Custodian’s assertion that these closed session minutes contain personnel material, ongoing litigation and attorney client privilege material. See Paff, supra, N.J.S.A. 47:1A-10, N.J.S.A. 10:4-12, and N.J.S.A. 47:1A-1.1.

### **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 GRC must conduct an *in camera* review of the following closed session minutes: March 19, 2009, April 16, 2009, June 18, 2009, August 20, 2009, September 17, 2009, January 14, 2010, February 18, 2010, June 10, 2010, September 16, 2010, December 16, 2010, June 16, 2011 and August 18, 2011, to determine the validity of the Custodian's assertion that these closed session minutes contain personnel material, ongoing litigation matters, and attorney client privilege material. See Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), N.J.S.A. 47:1A-10, N.J.S.A. 10:4-12, and N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver<sup>8</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see #1 above), nine (9) copies of the redacted records, a document or redaction index<sup>9</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>10</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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: Harlynn A. Lack, Esq.  
Case Manager

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

May 21, 2013

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<sup>8</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>9</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>10</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."