



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

April 30, 2013 Government Records Council Meeting

Sabino Valdes
Complainant

Complaint No. 2012-30

v.

New Jersey Department of Education
Custodian of Record

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the March 15, 2013¹ Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that because the Custodian timely responded granting inspection of the responsive records, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records, regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 30th Day of April, 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: May 2, 2013

¹ This complaint was prepared for adjudication at the Council’s March 22, 2013 meeting; however, the complaint could not be adjudicated due to lack of quorum.



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 30, 2013 Council Meeting**

**Sabino Valdes¹
Complainant**

GRC Complaint No. 2012-30

v.

**New Jersey Department of Education²
Custodian of Records**

Records Relevant to Complaint: On-site inspection of:

1. The original Volume III appendix dated June 11, 2004 filed with the New Jersey State Board of Education in Docket No. 30-03, inclusive of Tenure Charges marked as “P1” in evidence and undated as “August 2000.”
2. The complete set of Tenure Charges, with original marking made by Judge Weiss indicating the record in question as “P1” in evidence in Docket No. 3620-01.

Request Made: December 12, 2011

Response Made: December 22, 2011

GRC Complaint Filed: February 3, 2012³

Background⁴

Request and Response:

On December 12, 2011, the Complainant submitted two (2) Open Public Record Act (“OPRA”) requests to the Custodian. On December 22, 2011, the Custodian responded on the seventh (7th) business day⁵ granting on-site inspection of the responsive records with a deadline of January 12, 2012. On January 30, 2012, the Custodian responded noting that because the Complainant failed to contact the New Jersey Department of Education (“DOE”) regarding inspection, said requests were considered closed.

¹ No legal representation listed on record.

² Maria Casale, Custodian of Records. Represented by DAG Caroline Jones, on behalf of the NJ Attorney General.

³ The GRC received the Denial of Access Complaint on said date.

⁴ 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.

⁵ The Custodian certifies in the Statement of Information that she received the Complainant’s OPRA requests on December 13, 2011.

Denial of Access Complaint:

On February 3, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”) arguing that the Custodian never contacted him to arrange for his inspection of the records. The Complainant contended that the Custodian violated OPRA by failing to contact him and closing his requests even though the Complainant never inspected the responsive records.

Statement of Information:

On March 7, 2012, the Custodian filed her Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s two (2) OPRA requests on December 13, 2011. The Custodian certifies that she contacted the Office of Controversies and Disputes, where all of the Complainant’s tenure charge records were held due to the Complainant’s repeated OPRA requests, and was advised that the records were available for inspection. The Custodian further certifies that the records retention schedule for the responsive records is ten (10) years.

The Custodian certifies that she responded in writing on December 22, 2011 granting on-site inspection of the responsive records and advising the Complainant to schedule an appointment with a deadline of January 12, 2012. The Custodian certifies that the DOE routinely sets deadlines of two (2) weeks for on-site inspection; however, she permitted for a three (3) week deadline because she could not contact the Complainant via e-mail. The Custodian certifies that she closed the OPRA requests on January 30, 2012 after receiving no response from the Complainant.

Analysis⁶

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 mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). As also prescribed under N.J.S.A. 47:1A-5(i), a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).

Here, the Complainant’s dispute is that the Custodian never contacted him to schedule an appointment for inspection and she closed the requests on January 30, 2012, effectively denying the Complainant access to the responsive records.

⁶ 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.

The evidence indicates, however, that the Custodian responded on the seventh (7th) business day in writing granting inspection of the responsive records. The Custodian's response was thus appropriate and within the law. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Once the Custodian responded granting inspection until January 12, 2012, the Complainant failed to avail himself of his right to inspect the responsive records within that time frame. Thus, the evidence supports that the Custodian did not unlawfully deny access to the records sought and has not violated OPRA.

Therefore, because the Custodian timely responded granting inspection of the responsive records, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian timely responded granting inspection of the responsive records, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records, regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Senior Case Manager

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

March 15, 2013⁷

⁷ This complaint was prepared for adjudication at the Council's March 22, 2013 meeting; however, the complaint could not be adjudicated due to lack of quorum.