



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. 2012-91

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 O.R.)¹
Complainant**

GRC Complaint No. 2012-91

v.

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

Records Relevant to Complaint:

1. Name, address and telephone number of the specific bank that sent “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
2. A copy of the cover letter the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
3. A copy of the fax cover sheet the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
4. A copy of the e-mail the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
5. Inspection (and a chance to make a copy) of either the hard copy or the electronic images of the “cashed (cancelled) checks” that were used by the insurance carrier to pay for each of the bills Mr. Harrison filed in both federal court and the Mercer County Superior Court.³
6. Inspection (and a chance to make a copy) of the electronic metadata to include electronic hash value of the “native source file/data” of the “computer screen printouts” Mr. Harrison filed in Mercer County Superior Court in connection with his motion for summary judgment in John Doe v. West Windsor Plainsboro School District (MER-L-2316-06). Mr. Harrison filed the summary judgment motion in 2008 and it was heard by Honorable Thomas Sumners, Jr.

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 references “Exhibit 1” which is the November 22, 2011 letter referenced in the previous request items.

Custodian of Record: Geraldine Hutner
Request Received by Custodian: March 19, 2012
Response Made by Custodian: March 27, 2012
GRC Complaint Received: April 3, 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 submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. Item no. 1 of the Complainant's OPRA request clearly does not seek any records, but rather *information*: the name, address and telephone number of "the specific bank . . ." This request for information is not a valid OPRA request pursuant to MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). As such, despite the Custodian Counsel's disclosure of bank information, the Custodian was not obligated to do so and did not unlawfully deny access to request item no. 1.
2. Because the Custodian and the Custodian's Counsel have certified that no records responsive to the Complainant's OPRA request item nos. 2-4 exist and there is no credible evidence in the record to refute said certifications, pursuant to Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to request item nos. 2-4. N.J.S.A. 47:1A-6.
3. The Custodian did not unlawfully deny access to the records responsive to request item no. 5 because at the time of the Complainant's March 18, 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).
4. 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 whether the requested screen shots originated from the SASI system or GIF files.
 - b) There are contested facts regarding whether the CD-ROM 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 O.R.)

Complainant

v.

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

Complaint No. 2012-91

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. Item no. 1 of the Complainant’s OPRA request clearly does not seek any records, but rather *information*: the name, address and telephone number of “the specific bank...” This request for information is not a valid OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). As such, despite the Custodian Counsel’s disclosure of bank information, the Custodian was not obligated to do so and did not unlawfully deny access to request item no. 1.
2. Because the Custodian and the Custodian’s Counsel have certified that no records responsive to the Complainant’s OPRA request item nos. 2-4 exist and there is no credible evidence in the record to refute said certifications, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to request item nos. 2-4. N.J.S.A. 47:1A-6.
3. The Custodian did not unlawfully deny access to the records responsive to request item no. 5 because at the time of the Complainant’s March 18, 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).
4. The Council should refer this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts for the following reasons:

New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable



- a) There are contested facts regarding whether the requested screen shots originated from the SASI system or GIF files.
- b) There are contested facts regarding whether the CD-ROM 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, Esq.
(on behalf of O.R.)¹
Complainant**

GRC Complaint No. 2012-91

v.

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

Records Relevant to Complaint:

1. Name, address and telephone number of the specific bank that sent “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
2. A copy of the cover letter the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
3. A copy of the fax cover sheet the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
4. A copy of the e-mail the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.
5. Inspection (and a chance to make a copy) of either the hard copy or the electronic images of the “cashed (cancelled) checks” that were used by the insurance carrier to pay for each of the bills Mr. Harrison filed in both federal court and the Mercer County Superior Court.³
6. Inspection (and a chance to make a copy) of the electronic metadata to include electronic hash value of the “native source file/data” of the “computer screen printouts” Mr. Harrison filed in Mercer County Superior Court in connection with his motion for summary judgment in John Doe v. West Windsor Plainsboro School District (MER-L-2316-06). Mr. Harrison filed the summary judgment motion in 2008 and it was heard by Honorable Thomas Sumners, Jr.

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 references “Exhibit 1” which is the November 22, 2011 letter referenced in the previous request items.

Request Made: March 18, 2012
Response Made: March 27, 2012
Custodian: Geraldine Hutner
GRC Complaint Filed: April 3, 2012⁴

Background

April 3, 2012

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

- Complainant’s OPRA request dated March 18, 2012 with the November 22, 2011 letter referenced in the request attached
- Letter from Custodian’s Counsel to Complainant dated March 27, 2012⁵

The Complainant states that he submitted his OPRA request via facsimile on March 18, 2012. The Complainant states that he received a response to his OPRA request from Eric L. Harrison, Counsel for the School District, on March 19, 2012.⁶ Counsel’s responses to the Complainant’s itemized requests are detailed below:

1. Request item no. 1: None of the recipients of the OPRA request have records identifying a specific Bank of America office from which the check images were sent. Bank of America’s corporate headquarters is located at Bank of America Corporate Center, 100 N. Tryon Street, Charlotte, North Carolina, 28255.
2. Request item no. 2: None of the recipients of the OPRA request have such a record.
3. Request item no. 3: None of the recipients of the OPRA request have such a record.
4. Request item no. 4: None of the recipients of the OPRA request have such a record.
5. The electronic images of the checks in question were provided on CD-ROM with Counsel’s letter dated December 19, 2011 in response to an OPRA request dated December 15, 2011. Thus, this request has been satisfied.
6. Enclosed is a CD-ROM with a .pdf file consisting of the redacted screen shots that were filed in support of Counsel’s Motion for Summary Judgment in the “John Doe” matter in 2008. Counsel stated that redactions were made by printing the original images to paper and redacting them by hand, then scanning them to .pdf format and making additional redactions electronically. Any “hash marks” or metadata relating to the .pdf of the redacted images may be found within the .pdf file on the enclosed CD-ROM. Counsel also stated that the original images were provided to Counsel as “GIF” images which contain no “hash marks” or metadata beyond the date of their creation, which ranged from January 28, 2008 through

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

⁵ The Complainant attached additional records which are not relevant to the adjudication of this Denial of Access Complaint, as well as court decisions from the states of Arizona, New York, and Washington regarding access to metadata.

⁶ The response the Complainant received and attached to his Denial of Access Complaint form is actually dated March 27, 2012.

January 31, 2008 for all GIF images provided. Counsel stated that because he is unable to provide the GIF images in native format with the names and other personal identifiers of minor students redacted, the Federal Educational Rights and Privacy Act (“FERPA”) prohibits their production. Finally, Counsel stated that there exists no version of these screen shot images with any metadata beyond the dates on which they were created in January 2008.

The Complainant asserts that the response is not responsive to his OPRA request and is therefore considered a denial of the request. The Complainant also states that he was denied access to inspect the records responsive to request item no. 5 as well as the metadata pertinent native source files. The Complainant states that the CD-ROM Counsel provided does not include any metadata of the native source files for any of the eleven or twelve student records that are at issue.

The Complainant states that he is not requesting access to the actual student records since redacted copies of said records have already been disclosed to him. The Complainant states that he is seeking access to the metadata of the native source files for each of the student records described above and the CD-ROM provided by Counsel does not contain any such data. The Complainant 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. The Complainant asserts that none of the aforementioned metadata required the disclosure of personal identifying information about any student. The Complainant states that because the disclosure of metadata may be a matter of first impression for the GRC, he has enclosed copies of cases from other jurisdictions that have dealt with the issue of 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.⁷ 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.

April 27, 2012

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

- Complainant’s OPRA request dated March 18, 2012

⁷ 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. Rotimi Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), 2012-91 – Findings and Recommendations of the Executive Director 3

- Custodian Counsel's response to the Complainant's OPRA request dated March 27, 2012⁸

The Custodian certifies that she received the Complainant's OPRA request on March 19, 2012. The Custodian certifies that request items 1-5 sought records which the District does not possess. The Custodian certifies that to the extent said records existed, they would be in the possession of Counsel or the insurance company, thus the Custodian asked the District's legal counsel to respond to the Complainant's OPRA request.

The Custodian certifies that item 6 of the Complainant's request sought inspection of "the electronic metadata" of the "native source file" of "computer screen printouts" which Counsel had previously filed in Superior Court. The Custodian certifies that upon investigating the matter, she discovered that in the course of discovery in the "John Doe" case, Counsel obtained original, unredacted computer screen printouts in "GIF" format but that he printed them, redacted them to remove the names of students and then had them scanned and printed for filing with the Superior Court. The Custodian certifies that Counsel advised her that the unredacted GIF files may not be redacted in such a manner as to remove the names of the minor students, thus it would be impossible to produce or to make available for inspection the GIF files originally provided to Counsel by the District's IT Department. 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 the Complainant with all of the metadata attached to the GIF files on March 27, 2012.

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 none of the recipients of the OPRA request ever had any documents that may have been responsive to the request beyond those produced.

The Custodian's Counsel certifies that he responded to the Complainant's OPRA request on March 27, 2012. Counsel certifies with respect to request items 1-4, he informed the Complainant that none of the recipients of the OPRA request (himself, the Custodian and ACE Insurance) maintain the requested records. With respect to request item 5, Counsel certifies that he informed the requestor that said records had been previously provided on December 19, 2011 in response to an OPRA request dated December 15, 2011. With respect to item 6, Counsel certifies that the request sought the opportunity to inspect and copy "the electronic metadata" of the "native source file/data" of "computer screen printouts" which Counsel previously filed in Superior Court regarding another matter. Counsel certifies that in the course of discovery in the "John Doe" lawsuit filed by the Complainant, Counsel obtained original unredacted computer screen printouts in "GIF" format from the District's IT Department. Counsel certifies that he then printed them, redacted them to remove the names of students which are prohibited from disclosure by FERPA and the Pupil Records Act, and then had them scanned and printed for filing with the Superior Court.

⁸ The Custodian attached additional records which are not relevant to the adjudication of this Denial of Access Complaint.

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. However, in this case Counsel certifies that he determined the digital files from which the Complainant sought metadata – unredacted GIF files – could not be redacted in such a way as to prevent a recipient from viewing the redacted portions while maintaining the metadata; in order to preserve the necessary redactions, a new file with new metadata would have to be created. As such, Counsel certifies that GIF files could not be produced or inspected in their original format and could only be provided in paper format, or in redacted form in a new document, which is how he provided them.

Counsel asserts that based on the wording of the Complainant’s OPRA request, it appears that the Complainant is seeking more than just access to “records.” To wit, the screen shots in question were created using electronically stored information from the District’s SASI system which records student disciplinary events. Counsel contends that it appears the Complainant seeks metadata demonstrating the date and time on which particular data was entered into the SASI system. Counsel certifies that such records do not exist.

May 5, 2012⁹

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

1. The Custodian unlawfully denied access to unredacted screen shots of the Complainant’s client.
2. The Custodian unlawfully denied access to unredacted screen shots of another student, whose parent previously provided consent regarding disclosure of said screen shot.
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.
4. Another “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.
5. There are discrepancies in the Custodian’s certifications regarding whether the requested screen shots were printed from SASI or from a GIF file.
6. Counsel’s claim that metadata does not exist in the SASI system is inaccurate.
7. Counsel’s response to items 1-4 that no records responsive exist is erroneous.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

⁹ The parties submitted additional correspondence regarding this complaint, some of which suggest a misrepresentation of facts and information to the GRC. The GRC will not summarize said correspondence here.

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

“...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. 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 March 18, 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 March 27, 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. Name, address and telephone number of the specific bank that sent “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.	None of the recipients of the OPRA request have records identifying a specific Bank of America office from which the check images were sent. Bank of America’s corporate headquarters is located at Bank of America Corporate Center, 100 N. Tryon Street, Charlotte, North Carolina, 28255.
2. A copy of the cover letter the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.	None of the recipients of the OPRA request have such a record.
3. A copy of the fax cover sheet the	None of the recipients of the OPRA request

<p>bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.</p>	<p>have such a record.</p>
<p>4. A copy of the e-mail the bank used to send “the electronic images of the cashed (cancelled) checks” to ACE Insurance as mentioned in paragraph 3 of the attached letter dated November 22, 2011.</p>	<p>None of the recipients of the OPRA request have such a record.</p>
<p>5. Inspection (and a chance to make a copy) of either the hard copy or the electronic images of the “cashed (cancelled) checks” that were used by the insurance carrier to pay for each of the bills Mr. Harrison filed in both federal court and the Mercer County Superior Court.</p>	<p>The electronic images of the checks in question were provided on CD-ROM with Counsel’s letter dated December 19, 2011 in response to an OPRA request dated December 15, 2011. Thus, this request has been satisfied.</p>
<p>6. Inspection (and a chance to make a copy) of the electronic metadata to include electronic hash value of the “native source file/data” of the “computer screen printouts” Mr. Harrison filed in Mercer County Superior Court in connection with his motion for summary judgment in <u>John Doe v. West Windsor Plainsboro School District</u> (MER-L-2316-06). Mr. Harrison filed the summary judgment motion in 2008 and it was heard by Honorable Thomas Sumners, Jr.</p>	<p>Enclosed is a CD-ROM with a .pdf file consisting of the redacted screen shots that were filed in support of Counsel’s Motion for Summary Judgment in the “John Doe” matter in 2008. Redactions were made by printing the original images to paper and redacting them by hand, then scanning them to .pdf format and making additional redactions electronically. Any “hash marks” or metadata relating to the pdf of the redacted images may be found within the .pdf file on the enclosed CD-ROM. The original images were provided to Counsel as “GIF” images which contain no “hash marks” or metadata beyond the date of their creation, which ranged from January 28, 2008 through January 31, 2008 for all GIF images provided. Because Counsel is unable to provide the GIF images in native format with the names and other personal identifiers of minor students redacted, FERPA prohibits their production. There exists no version of these screen shot images with any metadata beyond the dates on which they were created in January 2008.</p>

The Complainant claims that records responsive to request item nos. 1-4 must exist and that the Custodian is obligated to obtain said records from the District's third party vendors pursuant to Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In item no. 1 of the Complainant's OPRA request, the Complainant sought access to the name, address and telephone number of an unidentified bank. Although the Custodian's Counsel provided the Complainant with the contact information for Bank of America's corporate office, such was not required under OPRA because item no. 1 of the Complainant's OPRA request is invalid.

The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files.*" (Emphasis added.) *Id.* at 549.

The MAG court held that a valid request under OPRA is a request seeking identifiable government *records*. Item no. 1 of the Complainant's OPRA request clearly does not seek any records, but rather *information*: the name, address and telephone number of "the specific bank..." This request for information is not a valid OPRA request pursuant to MAG, *supra*. As such, despite the Custodian Counsel's disclosure of bank information, the Custodian was not obligated to do so and did not unlawfully deny access to request item no. 1.

Regarding request item nos. 2-4, the Custodian and the Custodian's Counsel certified that no records responsive exist. While the Complainant contests said certifications on the basis that said records must exist, the Complainant fails to provide any evidence to contradict the Custodian's and the Custodian Counsel's certifications.

The Council has consistently held that there exists no denial of access when a custodian has demonstrated that no records responsive to a complainant's request exist. In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The Custodian responded stating that there was no record of any telephone calls made to the Complainant. The Custodian subsequently certified that no records responsive to the Complainant's request existed and the Complainant submitted no evidence to refute said certification. The GRC held the Custodian did not unlawfully deny access to the requested records because the Custodian certified that no records responsive to the request existed.

As in Pusterhofer, the Custodian and the Custodian's Counsel in this instant matter have certified that there are no records in the possession of the District, legal counsel, or ACE Insurance, that are responsive to the Complainant's request item nos. 2-

4. Accordingly, in the absence of any competent evidence to the contrary, the Custodian has legally discharged her statutory duties under OPRA.

Therefore, because the Custodian and the Custodian's Counsel have certified that no records responsive to the Complainant's OPRA request item nos. 2-4 exist and there is no credible evidence in the record to refute said certifications, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to request item nos. 2-4. N.J.S.A. 47:1A-6.

Regarding request item no. 5, the Complainant stated that the Custodian's denied the Complainant access to inspect the requested records. The Custodian's Counsel certified that he informed the Complainant that he had already provided said records to the Complainant on CD-ROM on December 19, 2011 in response to a previous OPRA request.

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).

In this instant matter, the Custodian's Counsel certified that he has previously provided the requested records to the Complainant on CD-ROM on December 19, 2011 in response to a previous OPRA request. More importantly, in the Complainant's OPRA request which is the subject of this instant complaint, the Complainant states, "See Exhibit 1" after listing the records requested in request item no. 5. "Exhibit 1" is a letter dated November 22, 2011 from the Custodian's Counsel to the Complainant in response to the Complainant's previous OPRA request dated November 17, 2011, which is not at issue in this complaint. The Complainant provides a visual indicator on said letter calling attention to the third paragraph, which reads:

"[w]ith respect to "the electronic images of the cashed (cancelled) checks" which you have asked to inspect, we mailed you printed copies of the electronic images, which were sent by the back to ACE in pdf format following receipt of your OPRA request of November 4, 2011. Upon request I would be happy to email the pdf file to you, or alternately to have it burned to a CD-ROM at your expense. Because the electronic images

are portable, they may be inspected by you in your office upon receipt, whether via email or mail on CD-ROM. Please advise of your preference.”

Thus, based on the letter dated November 22, 2011, which the Complainant attached to his OPRA request, which is the subject of this denial of access complaint, and the Custodian Counsel’s certification, the evidence of record provides that at the time of the Complainant’s March 18, 2012 OPRA request, the Complainant was in possession of both hard copies and electronic copies on CD-ROM of the records responsive to request item no. 5.

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. 5 because at the time of the Complainant’s March 18, 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 the Complainant’s request item no. 6, the Complainant submitted two (2) “expert reports” from computer companies to show that the extraction of metadata will not disclose personal identifying information about any of the students, and that the CD-ROM provided by Counsel does not contain any of the requested metadata. The Complainant also asserts that there are discrepancies in the Custodian’s certifications regarding whether the requested screen shots were printed from the District’s SASI system, or from a GIF file.

Based on the evidence of record, there are contested facts regarding the existence and availability of the records requested. The Custodian certifies that the digital files from which the Complainant sought metadata – unredacted GIF files – could not be redacted in such a way as to prevent a recipient from viewing the redacted portions while maintaining the metadata; in order to preserve the necessary redactions, a new file with new metadata would have to be created. The Complainant submitted two (2) “expert reports” from computer companies to show that the extraction of metadata will not disclose personal identifying information about any of the students.

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.

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 whether the requested screen shots originated from the SASI system or GIF files.
2. There are contested facts regarding whether the CD-ROM 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. Item no. 1 of the Complainant’s OPRA request clearly does not seek any records, but rather *information*: the name, address and telephone number of “the specific bank...” This request for information is not a valid OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). As such, despite the Custodian Counsel’s

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

disclosure of bank information, the Custodian was not obligated to do so and did not unlawfully deny access to request item no. 1.

2. Because the Custodian and the Custodian's Counsel have certified that no records responsive to the Complainant's OPRA request item nos. 2-4 exist and there is no credible evidence in the record to refute said certifications, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to request item nos. 2-4. N.J.S.A. 47:1A-6.
3. The Custodian did not unlawfully deny access to the records responsive to request item no. 5 because at the time of the Complainant's March 18, 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).
4. 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 whether the requested screen shots originated from the SASI system or GIF files.
 - b) There are contested facts regarding whether the CD-ROM 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.

Prepared By: Dara L. Barry
Communications Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013