



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

April 29, 2014 Government Records Council Meeting

Douglas Wicks
Complainant

Complaint No.: 2013-210

v.

Bernards Township Board of Education (Somerset)
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 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 because the Custodian certified that all records responsive to the Complainant’s OPRA request were disclosed to the Complainant within the statutorily mandated response time and the Complainant failed to provide any competent, credible evidence to contradict the Custodian’s certification, the Custodian did not unlawfully deny the Complainant access to the requested records. N.J.S.A. 47:1A-6. *See also* Pitts v. Department of Corrections, GRC Complaint No. 2003-99 (March 2004).

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 29th Day of April, 2014

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, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2013 Council Meeting**

**Douglas Wicks¹
Complainant**

GRC Complaint No. 2013-210

v.

**Bernards Township Board of Education (Somerset)²
Custodial Agency**

Records Relevant to Complaint: Any and all documents provided to the Somerset County Prosecutor's Office relating to a complaint initiated by Douglas Wicks.

Custodian of Record: Rodric McLaughlin

Request Received by Custodian: November 26, 2012

Response Made by Custodian: November 27, 2012

GRC Complaint Received: July 18, 2013

Background³

Request and Response:

On November 26, 2012, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On November 27, 2012, the first (1st) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the records responsive to his request are denied as criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1. On December 3, 2012, the fifth (5th) business day following receipt of the Complainant's request, the Custodian notified the Complainant in writing that the Custodian learned that the complaint referenced by the Complainant in his request was administratively closed; therefore the requested records were being disclosed to the Complainant.

Denial of Access Complaint:

On July 18, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he was denied the requested records because the records he requested are not the records from the Somerset County

¹ No legal representation listed on record.

² Represented by Derlys Maria Gutierrez, Esq., of Adams Gutierrez & Lattiboudere, LLC (Newark, NJ).

³ 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.

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Prosecutor's Office ("Prosecutor's Office") that are in the possession of the Custodian, but rather the records that the Bernards Township Board of Education ("Board") submitted to the Prosecutor's Office relating to the complaint.⁴

Statement of Information:

On July 29, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the Complainant's request on November 26, 2012, and responded to the request on November 27, 2012 and December 3, 2012.

The Custodian certifies that the following records, which are the records responsive to the Complainant's request, are the documents that were subpoenaed by the Prosecutor's Office and were held by said office to investigate a criminal complaint filed by the Complainant:

1. Paperwork regarding the open bidding process, including Board meeting minutes regarding the 2011 roofing project.
2. Specifications regarding the 2011 roofing project, including the name and business of the author of such specifications.
3. Documents regarding advertisement procedures and postings relating to the bid process associated with the 2011 roofing project.
4. Architectural reports generated by the Spiegle Group regarding the 2011 roofing project.
5. Additional specifications or reports done by outside companies used by the Board during the 2011 roofing project regarding the conditions of the Cedar Hill Liberty Corner and Oak Street Schools in Bernards Township.

The Custodian certifies that when he responded to the request on November 27, 2012, he believed that the Prosecutor's Office was still investigating the criminal complaint. However, the Custodian further certifies that on or about November 30, 2012, the Board received notice that on or about November 20, 2012, the criminal investigation and complaint were administratively closed by the Prosecutor's Office. The Custodian certifies that, as such, disclosure of the requested records would no longer violate the secrecy requirements of the Prosecutor's subpoena; therefore said records were disclosed to the Complainant on December 3, 2012.

The Custodian certifies that on December 10, 2012, the Complainant e-mailed the Custodian's secretary to inform her that he received the requested records but that an architectural drawing printed on 8 1/2 by 11 inch paper was almost unintelligible.⁵ The Custodian certifies that on December 12, 2012, he addressed the Complainant's issue by sending him an 11 by 17 inch copy of the architectural drawing.

⁴ The Complainant's verbatim allegation is, "[r]ecords SUBMITTED to County prosecutor relating to my complaint denied per misapplication of NJSA 47:1A-4 as records requested are within the board of education records I am not asking for the records from the prosecutor." Emphasis in original.

⁵ In the e-mail the Complainant states in relevant part, "I received the OPRA documents requested but find the architectural drawing submitted very small and almost unintegralible (sic)..." Nowhere in the e-mail did the Complainant assert that the disclosed records were not responsive to his request or incomplete.

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Additional Submissions:

On July 30, 2013, the GRC e-mailed the Complainant to inform him that the Custodian stated that he disclosed the requested records to the Complainant on December 3, 2012. The GRC also informed the Complainant that, in response to the Complainant's request for a clearer copy of one of the records, the Custodian sent him another copy.

The GRC told the Complainant to notify the GRC if he wished to withdraw the complaint. The GRC also told the Complainant that if he wanted the GRC to continue with the adjudication of the complaint, to let the GRC know if the records disclosed by the Custodian were responsive to the Complainant's request.

The Complainant failed to reply to the GRC's correspondence.

Analysis

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 also provides that a custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. N.J.S.A. 47:1A-5.g. OPRA further provides that unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. N.J.S.A. 47:1A-5.i.

In Pitts v. Department of Corrections, GRC Complaint No. 2003-99 (March 2004), the complainant requested his prison medical records. Subsequently, the Complainant signed a document acknowledging that he had received the requested records. The Council found that the complaint should be dismissed because the Complainant acknowledged that he had received the requested records.

Here, the Custodian responded to the Complainant's request in writing on November 27, 2012, the first (1st) business day following receipt of the request, denying the request because the Custodian believed that the records were criminal investigatory records, the disclosure of which would violate the secrecy requirements of the Prosecutor's subpoena. However, the Custodian certified that on or about November 30, 2012, he learned that the criminal investigation and complaint were administratively closed by the Prosecutor's Office; therefore, disclosure of the requested records would not violate the secrecy requirements of the subpoena. Accordingly, on December 3, 2012, the fifth (5th) business day following receipt of the request, the Custodian disclosed the requested records to the Complainant. The evidence of record reveals that on

December 10, 2012, the Complainant e-mailed the Custodian's secretary to inform her that he received the requested records. Over seven months later, the Complainant filed this complaint, wherein he states that the records he received were not responsive to his request because he had requested the records the Board submitted to the Prosecutor's Office relating to his criminal complaint, not for records from the Prosecutor's Office.

Contrary to the Complainant's assertion, the records disclosed by the Custodian were responsive to the Complainant's request. This is evidenced by the Custodian's averment that the records responsive to the request are the documents that were subpoenaed from the Board by the Prosecutor's Office and were held by that office to investigate a criminal complaint filed by the Complainant. Further, the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Moreover, as in Pitts, GRC 2003-99, the Complainant acknowledged receipt of the records responsive to the request in his December 10, 2012 e-mail to the Custodian's secretary by stating, "I received the OPRA documents requested..."

Therefore, because the Custodian certified that all records responsive to the Complainant's OPRA request were disclosed to the Complainant within the statutorily mandated response time and the Complainant failed to provide any competent, credible evidence to contradict the Custodian's certification, the Custodian did not unlawfully deny the Complainant access to the requested records. N.J.S.A. 47:1A-6. See also Pitts, GRC 2003-99.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian certified that all records responsive to the Complainant's OPRA request were disclosed to the Complainant within the statutorily mandated response time and the Complainant failed to provide any competent, credible evidence to contradict the Custodian's certification, the Custodian did not unlawfully deny the Complainant access to the requested records. N.J.S.A. 47:1A-6. See also Pitts v. Department of Corrections, GRC Complaint No. 2003-99 (March 2004).

Prepared By: John E. Stewart, Esq.

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

April 22, 2014