



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 29, 2014 Government Records Council Meeting

Fred Klock
Complainant

Complaint No. 2013-242

v.

Newark Public Schools (Essex)
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 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:

1. The Custodian bore her burden of proving she did not unlawfully deny access to Item No. 1 of the Complainant’s July 18, 2013 OPRA request. N.J.S.A. 47:1A-6. The Custodian’s SOI and June 3, 2014 certification stated that she produced the records, via email, on August 6, 2013, and that no other responsive records existed. Furthermore, there is no evidence in the record to refute the Custodian’s SOI and certification. *See Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005).
2. Since the Custodian certified that no responsive documents to the Complainant’s request exists, and there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny access to Item No. 2 of the Complainant’s July 18, 2013 OPRA request. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Education, GRC Complaint No. 2005-49 (July 2005).

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 July, 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: July 31, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 29, 2014 Council Meeting**

**Fred Klock¹
Complainant**

GRC Complaint No. 2013-242

v.

**Newark Public Schools (Essex)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. Salaries paid to all contingent workers for 2011-2012 and 2012-2013 years as listed on consultant PDF provided in response to OPRA request #1424. Include any other compensation, bonus, per diem, or remuneration.
2. Job description for “contingent workers.”

Custodian of Record: Pamela Luke

Request Received by Custodian: July 18, 2014

Response Made by Custodian: August 6, 2013

GRC Complaint Received: August 29, 2013

Background³

Request and Response:

On July 18, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 5, 2013, the Complainant sent an email to the Custodian confirming the parties’ agreement to extend the Custodian’s time to respond to August 7, 2013. On August 6, 2013, the Custodian responded in writing, producing responsive documents to Item No. 1 of the Complainant’s OPRA request. The Custodian further stated that there were no responsive documents to Item No. 2.

Denial of Access Complaint:

On August 29, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was denied access to

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

his July 18, 2013 OPRA request in its entirety; however, his denial of access complaint does not include his request.

Regarding Item No. 1, the Complainant argued that any records of payments made by a public entity within a period of two (2) years must be maintained by the agency and available to the public. Concerning Item No. 2, the Complainant claimed he was advised that a public school district must have a job description for every position. Therefore, a record should exist which describes the duties of a “contingent worker” in the Newark Public Schools District (“District”).

Statement of Information:

On October 11, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that on August 6, 2013 she provided the Complainant, via email, a list of contingent workers for the District, as well as a list containing those workers’ salaries and compensation for the years 2011-2012 and 2012-2013. The Custodian certified that said documents comprised of all responsive records to Item No. 1 of the Complainant’s July 18, 2013 OPRA request. Furthermore, the Custodian certified that the District’s Human Resources Interim Director advised her that the District does not have a job description for a “contingent worker.” Therefore, the Custodian certified that no responsive records to Item No. 2 of the Complainant’s request exist.

Additional Information:

On June 2, 2014, the GRC reached out to the Custodian requesting additional information. The GRC asked the Custodian if she produced responsive documents to Item No. 1 of the Complainant’s OPRA request, and if so, to certify to same.

On June 3, 2014, the Custodian provided the GRC with an additional certification. The Custodian certified that she provided responsive documents to the Complainant on August 6, 2013, via email. Additionally, the Custodian clarified that the list of contingent workers was previously produced in a separate OPRA request, and updated to include payroll and compensation information in response to the current request.

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.

Request Item No. 1

In Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the custodian produced one (1) responsive record to the complainant's March 2, 2005, OPRA request, and stated that no other responsive records existed. The complainant argued that more responsive records existed. Id. The GRC asked the custodian to certify as to whether all responsive records were produced. Id. On August 1, 2005, the custodian certified that the provided document was the only responsive record. Id. The GRC held that:

“[t]he Custodian certified that the Complainant was in receipt of all contracts and agreements responsive to the request. The Custodian has met the burden of proving that all records in existence responsive to the request were provided to the Complainant. Therefore there was no unlawful denial of access.”

Id.

Similar to Burns, the Complainant argued that he was denied access to Item No. 1 of his July 18, 2013 OPRA request. Id. Additionally, the Custodian wrote on the OPRA form that the Complainant's request was denied and that there were no responsive documents maintained. However, the Custodian's SOI included an email to the Complainant dated August 6, 2013, with responsive documents attached. To clarify, the GRC requested additional information from the Custodian on whether she produced responsive documents to Item No. 1. On June 3, 2014, the Custodian responded to the GRC, certifying that she produced all responsive documents to Item No. 1 on August 6, 2013. The Complainant did not respond to the Custodian's certification.

Therefore, the Custodian bore her burden of proving she did not unlawfully deny access to Item No. 1 of the Complainant's July 18, 2013 OPRA request. N.J.S.A. 47:1A-6. The Custodian's SOI and June 3, 2014 certification stated that she produced the records, via email, on August 6, 2013, and that no other responsive records existed. Furthermore, there is no evidence in the record to refute the Custodian's SOI and certification. *See* Burns, GRC No. 2005-68.

Request Item No. 2

In Pusterhofer v. N.J. Dep't of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records 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. The GRC determined that the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed.

Here, the Complainant sought the District's job description of a “contingent worker.” Further, he stated that he was advised that the District is required to have a job description for every position. The Complainant did not state from whom he learned of the alleged requirement. In contrast, the Custodian certified in her SOI that she inquired with Human Resources, and was advised that no responsive record existed regarding the job description of a “contingent worker.”

Similar to Pusterhofer, the Complainant did not provide evidence to refute the Custodian's SOI. Id.

Therefore, since the Custodian certified that no responsive documents to the Complainant's request exist, and there is no credible evidence in the record to refute the Custodian's SOI, the Custodian did not unlawfully deny access to the Item No. 2 of the Complainant's July 18, 2013 OPRA request. N.J.S.A. 47:1A-6; Pusterhofer, GRC No. 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian bore her burden of proving she did not unlawfully deny access to Item No. 1 of the Complainant's July 18, 2013 OPRA request. N.J.S.A. 47:1A-6. The Custodian's SOI and June 3, 2014 certification stated that she produced the records, via email, on August 6, 2013, and that no other responsive records existed. Furthermore, there is no evidence in the record to refute the Custodian's SOI and certification. *See* Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
2. Since the Custodian certified that no responsive documents to the Complainant's request exists, and there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to Item No. 2 of the Complainant's July 18, 2013 OPRA request. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Education, GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

July 22, 2014