



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

January 30, 2015 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant
v.
NJ Department of Education
Custodian of Record

Complaint No. 2014-125

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the October 21, 2014 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 Complainant’s need for access to the Woodbine Board of Education’s members’ home addresses failed to outweigh the Custodian’s need to keep same confidential, the Custodian has not unlawfully denied access to the members’ home addresses contained on the responsive Financial Disclosure Statements. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1. Further, the Complainant has failed to provide any argument that would compel the GRC to consider reversing its decision in Vargas (On Behalf of The Philadelphia Inquirer) v. NJ Dep’t of Educ., GRC Complaint No. 2012-126 (April 2013).

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 January, 2015

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 4, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 30, 2015 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2014-125

v.

**New Jersey Department of Education²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of all past and present Financial Disclosure Statements (“FDS”) on file with the School Ethics Commission (“SEC”) for Woodbine Board of Education members or employees Lynda Anderson-Towns, Allen Parmelee, Janita Hutchinson, Miriam Vives-Rivera, Manuel Gonzalez, Victoria London and Gerald Murray

Custodian of Record: Dominic Rota³
Request Received by Custodian: March 5, 2014
Response Made by Custodian: March 14, 2014
GRC Complaint Received: March 18, 2014

Background⁴

Request and Response:

On March 5, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 14, 2014, the Custodian responded in writing providing access to the responsive FDS records with redactions of e-mails addresses, telephone numbers, social security numbers and addresses contained within the five (5) Woodbine Board of Education’s (“WBOE”) members’ forms.

Denial of Access Complaint:

On March 18, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant averred that he filed this complaint with the express purpose of having the GRC reconsider its decision in Vargas (On Behalf of The Philadelphia Inquirer) v. NJ Dep’t of Educ., GRC Complaint No. 2012-126 (April 2013). The

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Christopher Huber.

³ In the Denial of Access Complaint, the Complainant named Kim Gatti as the custodian of record.

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.

Complainant argued that in Vargas, the Council considered Walsh v. Twp. of Middletown (Monmouth), GRC Complaint No. 2008-266 (Interim Order dated November 18, 2009)(holding that N.J.S.A. 40A:9-22.6(b) and N.J.S.A. 40A:9-22.6(c) required that real property owned by a public official be listed on the FDS form and thus was disclosable under OPRA). However, the Complainant contended that Walsh, is distinguishable from Vargas, because N.J.S.A. 18A:12-26.7 does not require school officials to provide addresses or real property owned. The Complainant noted that, based on this difference, the Council conducted a balancing test and determined that the Custodian lawfully denied access to the street addresses on school officials' FDS forms because their interest in privacy outweighed the complainant's need for access.

The Complainant asserted that the disclosability of home addresses is a hotly contested issue. He noted that OPRA does not expressly exempt access to a citizen's home address; however, OPRA does require a public agency to "safeguard from public access a citizen's personal information with which it has been entrusted when disclosure . . . would violate the citizen's reasonable expectation of privacy." N.J.S.A. 47:1A-1.

The Complainant asserted that this complaint is factually similar to Vargas, GRC 2012-126, in that both sought FDS records that board of education elected officials were required by law to file with the SEC. N.J.S.A. 18A:12-26.7. The Complainant stressed that the responsive records pertained to elected officials and not private citizens. To this end, the Complainant contended that public officials knowingly entering into elected office should expect a different standard for their "reasonable expectation of privacy." The Complainant argued that, notwithstanding notable differences between the statutes requiring FDS filings, no balancing test on disclosure should be necessary because disclosure of elected officials' home addresses are required as a matter of law. The Complainant noted that in Vargas, the custodian stated in his balancing test that "members are volunteers that might think twice about serving" if they feared that "their home addresses would be published and disseminated." Id. at 3. The Complainant asserted that the simple fact is that every elected official should think twice before seeking office because they have less privacy rights than citizens.

In closing, the Complainant argued that there is no reasonable basis to withhold home addresses on public official related disclosures. Further, the Complainant asserted that anyone can file an OPRA request with their county clerk for a copy of the officials' petitions. The Complainant thus requested that the GRC reverse its prior decision in Vargas, GRC 2012-126 and order disclosure of the redacted records without any redactions.

Statement of Information:

On May 12, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 5, 2014 and responded in writing on March 14, 2014 providing all responsive records with certain information redacted pursuant to N.J.S.A. 47:1A-1.

The Custodian contended that the Complainant has asked the GRC to reverse its decision in Vargas, GRC 2012-126; however, the Complainant failed to advance any arguments warranting a reversal of said decision. The Custodian recapitulated the facts of Vargas, and

argued that the Council's decision applies here and that his denial of access was lawful. Further, the Custodian argued that the Complainant's analogy to ballot petitions is without merit because N.J.S.A. 18A:12-26 does not require the disclosure of addresses of real property.

The Custodian asserted that applying the same balancing test answers here as submitted by the custodian in Vargas, yields the same result. The Custodian contended that the information at issue here is identical to the information at issue in Vargas. Specifically, the individuals here face the same potential intrusions into their privacy if street addresses are disclosed. Further, school board members may think twice about serving if they felt their home addresses would be published and disseminated. Also, there are no adequate safeguards to prevent unauthorized disclosure and no statutory mandate requiring same. Finally, the Complainant failed to identify a discernable need for the addresses.

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.

In Vargas, GRC 2012-126, the complainant sought access to FDS forms submitted by Camden City Board of Education members. The custodian provided same, but redacted street addresses. The GRC, tasked with determining whether the custodian lawfully redacted the street addresses, required the parties to submit balancing test questionnaires. The complainant argued that her need for the addresses was to ensure that they met the residency requirement for holding said position. The custodian maintained that the street addresses should remain confidential to curtail unsolicited contact and further to avoid chilling future candidates from running for a Board position for fear that their home addresses would be made public.

Based on the answers provided by the parties, the Council determined that the custodian lawfully denied access to the addresses. More specifically, the Council held that "non-disclosure of the street address is favored. The Complainant is currently in possession of the information she seeks, namely, whether the school board members reside in the City of Camden." Id. at 5. In reaching this conclusion, the GRC noted that the facts here were distinguishable from the Council's decision in Walsh, GRC 2008-266, because N.J.S.A. 18A:12-26 did not require a filer to provide an address or real property owned. Id.

In this matter, the Complainant filed this complaint challenging similar redactions to FDS forms with the express purpose of having the GRC reconsider Vargas. In instances where disclosure of personal information is at issue, the GRC will generally require the parties to submit balancing test questionnaires. Lakavitch v. Twp. of Toms River (Ocean), GRC Complaint No. 2010-230 (Interim Order dated February 28, 2012); Levitt v. Montclair Parking Auth. (Essex), GRC Complaint No. 2012-150 (Interim Order dated June 25, 2013); Giannakis v. NJ Dep't of Educ., GRC Complaint No. 2012-152 (May 2013); Bean v. Borough of Belmar (Monmouth), GRC Complaint No. 2013-39

(Interim Order dated December 20, 2013). However, balancing test questionnaires are not necessary here because both parties have presented their respective arguments in their filings.

In the Denial of Access Complaint, the Complainant asserted that disclosure of elected officials' home addresses is required as a matter of law. Further, he contended that no balancing test should be necessary because publically elected officials have less privacy rights than a citizen.

In the SOI, the Custodian adopted the arguments for confidentiality presented in Vargas. He argued that disclosure could cause unsolicited contact, disclosure could have a chilling effect on participation and that there are no safeguards to prevent unauthorized disclosure. Further, the Custodian asserted that the Complainant presented no discernable need for the addresses and ultimately failed to present an argument warranting a reversal of Vargas.

As a threshold issue, the GRC first notes that N.J.A.C. 5:105-2.10 sets forth procedures to which a party must comply in order to request reconsideration. The Complainant has no standing to request reconsideration of a decision to which he was not a party. However, the Complainant's use of reconsideration may simply be a misnomer for seeking the Council's reversal of a prior decision. Such an action is not novel to the Council. *See Rodriguez v. Kean Univ.*, GRC Complaint No. 2013-69 (March 2014)(reversing its previous holding in Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2009-148 (Interim Order dated June 29, 2010)).

However, no such reversal is warranted here. The Complainant's asserted need that public officials have less privacy rights to their home addresses than citizens is not compelling enough to outweigh the potential for unsolicited contact of officials. Individuals elected to public office do not waive their right to separate their service from their personal life. It is further unreasonable to expose public officials to the possibility of constituents appearing at their personal residence to discuss official business, to express their varying positions about a highly-charged issue, or to confront the official, whether verbally or physically. Similarly, these individuals do not expect that their families would be subject to the same unsolicited contact. Any decision to the contrary based on the idea that a public official somehow has less privacy would absolutely chill an individual's interest in running for office.

Further, a disclosure of public official's home address is not required as a matter of law. In fact, the plain language of N.J.S.A. 18A:12-26 supports that school board members are not required to disclose their address on FDS forms. Had the Legislature intended to require disclosure of board member addresses, they would have crafted N.J.S.A. 18A:12-26 similar to N.J.S.A. 40A:9-22.6(b) and N.J.S.A. 40A:9-22.6(c). Also, while the Complainant has noted that anyone can obtain the address by other means, same is not dispositive to the instant issue, which is the disclosure of home addresses on board of education members' FDS forms.

Therefore, because the Complainant's need for access to the WBOE members' home addresses failed to outweigh the Custodian's need to keep same confidential, the Custodian has not unlawfully denied access to the members' home addresses contained on the responsive FDS forms. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1. Further, the Complainant has failed to provide any argument that would compel the GRC to consider reversing its decision in Vargas, GRC 2012-126.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's need for access to the Woodbine Board of Education's members' home addresses failed to outweigh the Custodian's need to keep same confidential, the Custodian has not unlawfully denied access to the members' home addresses contained on the responsive Financial Disclosure Statements. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1. Further, the Complainant has failed to provide any argument that would compel the GRC to consider reversing its decision in Vargas (On Behalf of The Philadelphia Inquirer) v. NJ Dep't of Educ., GRC Complaint No. 2012-126 (April 2013).

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

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

October 21, 2014⁵

⁵ This complaint was prepared for adjudication at the Council's October 28, November 18, and December 16, 2014 meetings, but could not be adjudicated due to lack of quorum.