



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

Michael Inzelbuch
Complainant

Complaint No. 2014-202

v.

Lakewood Board of Education (Ocean)
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the December 9, 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 the Custodian has borne his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, there was no “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

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**

**Michael I. Inzelbuch¹
Complainant**

GRC Complaint No. 2014-202

v.

**Lakewood Board of Education (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via pickup of:

1. Any and all contracts, invoices and payments to Rebecca Fishman and any and all other consultants, contractors or third parties (such as Mrs. Nadler) who are certified teachers for the blind and/or visually impaired from 2012 to present.
2. Any and all payments for tuition, via Individualized Education Program (“IEP”) or reimbursement to a parent/guardian, made by the Lakewood Board of Education (“BOE”) to Orchos Chaim and any and all other non-public schools including, but not limited to, Yeshivas, unaccredited schools, or those not approved by the New Jersey Department of Education (“DOE”) from 2012 to present.
3. Any and all communications and notes to or from DOE regarding tuition payments from 2012 to present.

Custodian of Record: Thomas D’Ambola
Request Received by Custodian: April 23, 2014
Response Made by Custodian: April 28, 2014
GRC Complaint Received: May 22, 2014

Background³

Request and Response:

On April 13, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 28, 2014, the third (3rd) business day after receipt of the request, Ms. Diane Piasentini responded in writing on behalf of the Custodian providing access to multiple records as e-mail attachments.

¹ No legal representation listed on record.

² Represented by James Eric Andrews, Esq., of Schenck, Price, Smith & King, LLP (Florham Park, 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.

Denial of Access Complaint:

On May 22, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that, to the best of his knowledge, the Custodian failed to respond to his OPRA request.

Statement of Information:

On June 19, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 23, 2014. The Custodian certified that Pupil Personnel Services (“PPS”) conducted a search for responsive records based on names provided by the Complainant. The Custodian affirmed that Ms. Piasentini responded in writing on April 28, 2014.

OPRA request item No. 1

The Custodian affirmed that the BOE provided a listing of payments to Ms. Fishman (1 page) and Mrs. Nadler (4 pages). The Custodian certified that PPS also advised that it maintains no contracts relating to these payments or for payments of any other consultants, contractors or third parties providing services for the blind and/or visually impaired.

OPRA Request item No. 2

The Custodian certified that the BOE provided a listing of tuition payments to Yeshiva Orchos Chaim (2 pages). Further, the Custodian certified that, subsequent to the BOE’s response, Ms. Piasentini asked PPS whether it could generate additional reports on non-public school tuition payments for Yeshivas. The Custodian affirmed that PPS was able to locate additional records, which are attached. The Custodian also certified that PPS advised that the BOE only makes tuition payments to Yeshivas and does not make payments to other non-public schools.

The Custodian argued that he did not provide records regarding payments to parents/guardians. The Custodian contended that the Complainant’s request item failed to identify specific government records; the Custodian would be required to review all payment files to find responsive records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).

OPRA Request item No. 3

The Custodian contended that no records were provided because the Complainant’s request failed to identify specific records that would require a review of all “communications and notes.” MAG, 375 N.J. Super. at 546; NJ Builders, 390 N.J. Super. at 180.

Analysis

Timeliness

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). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁴ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

The Complainant filed this complaint arguing that, to the best of his knowledge, he never received a response to his OPRA request. However, in the SOI, the Custodian certified that he received the request on April 23, 2014 and that Ms. Piasentini responded in writing on his behalf on April 28, 2014. Additionally, the Custodian attached evidence of Ms. Piasentini's response to support his certification. Thus, the evidence of record clearly supports that the Custodian timely responded to the Complainant's OPRA request and that no "deemed" denial occurred.

Therefore, the Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

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

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

December 9, 2014⁵

⁴ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

⁵ This complaint was prepared for adjudication at the Council's December 16, 2014 meeting but could not be adjudicated due to lack of quorum.