



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

January 30, 2015 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2014-58

v.

Woodbine Board of Education (Cape May)
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the January 20, 2015 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 letter from former New Jersey Department of Education Commissioner Christopher D. Cerf to Superintendent Lynda Anderson-Towns and Woodbine Board of Education President Melissa Rodriguez, dated January 8, 2014, did not exist at the time of the Complainant’s OPRA request, the Custodian was under no obligation to provide same once he obtained same. Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012); Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013). *See also* Driscoll v. Sch. Dist. of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008). Based on the foregoing, the Custodian did not unlawfully deny access to the Letter. N.J.S.A. 47:1A-6.

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. 2014-58

v.

**Woodbine Board of Education (Cape May)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of all correspondence regarding the State Monitor.³

Custodian of Record: Alan Parmelee

Request Received by Custodian: January 6, 2014

Response Made by Custodian: January 8, 2014

GRC Complaint Received: January 28, 2014

Background⁴

Request and Response:

On January 1, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 8, 2014, the Custodian responded in writing via e-mail attaching a letter dated January 7, 2014. Therein the Custodian stated that he needed an extension of time until January 17, 2014.

On January 17, 2014, the Complainant e-mailed the Custodian advising that the extended time frame expired upon close of business and that he was in violation of OPRA because he failed to disclose responsive records. The Complainant required that the Custodian disclose responsive records by January 21, 2014 or he would initiate an action in Superior Court.

On January 18, 2014, the Custodian e-mailed the Complainant a letter dated January 16, 2014. Therein, the Custodian stated that he needed a second (2nd) extension until January 24, 2014 to comply with the Complainant’s OPRA request. Further, the Custodian purportedly disclosed correspondence regarding the State Monitor. On the same day, the Complainant denied

¹ No legal representation listed on record.

² Represented by Susan Hodges, Esq., of Archer & Greiner, P.C. (Haddonfield, NJ).

³ The Complainant requested additional records that are not at issue in this complaint.

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.

any supplemental extensions asserting that OPRA only permits one (1) extension⁵ and reiterated that all responsive records must be disclosed by January 21, 2014. Further, the Complainant noted that the Custodian's response appeared to be incomplete because he saw no correspondence informing the Custodian of audits or investigations and assignments from the State Monitor.

Denial of Access Complaint:

On January 28, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian sought multiple extensions. The Complainant argued that OPRA does not permit multiple extensions of time to reply. The Complainant contended that, although he received some records, he believed the Custodian unlawfully denied access to additional records. Finally, the Complainant requested that the GRC determine that the Custodian knowingly and willfully violated OPRA and is subject to a civil penalty.

Statement of Information:

On March 10, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on January 6, 2014. The Custodian further certified that he provided sixteen (16) pages of responsive records to the Complainant via e-mail on January 10, 2014.

Additional Submissions:

On March 11, 2014, the Complainant e-mailed the GRC disputing the Custodian's SOI certification that he disclosed responsive records. Further, the Complainant noted that the Custodian did not include the records that the Custodian affirmed he disclosed in the SOI.

On June 4, 2014, the Complainant emailed the GRC attaching a letter from former New Jersey Department of Education ("DOE") Commissioner Christopher D. Cerf to Superintendent Lynda Anderson-Towns and Woodbine Board of Education President Melissa Rodriguez dated January 8, 2014 ("Letter"). The Complainant stated that he received (on an unknown date) the Letter, which the Custodian falsely certified that he provided to the Complainant in the SOI.

On September 30, 2014, the GRC sought additional information from the Custodian. Specifically, based on the conflicting dates of response in the record, and in light of the Letter, the GRC requested that the Custodian submit a legal certification answering the following:

1. Did the Custodian maintain the Letter, and if so, on what date did he receive same?
2. Did the Custodian provide the Letter to the Complainant, and if so, on what date?
3. Provide copies of the sixteen (16) pages of records that the Custodian certified he provided to the Complainant on January 10, 2014.

⁵ The GRC notes that the Council addresses multiple extensions in Ciccarone v. NJ Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).

The GRC required the Custodian to submit his legal certification by close of business on October 3, 2014.

On October 3, 2014, the Custodian stated that he received the Letter on January 14, 2014 as a backup document at a BOE special meeting held that night. DOE sent the Letter to Superintendent Towns-Anderson on January 13, 2014. Further, the Custodian stated that he did not disclose the Letter to the Complainant because he received it after the submission of the Complainant's OPRA request. The Custodian also attached the sixteen (16) pages of records he certified in the SOI that he provided to the Complainant in a second e-mail to the GRC.⁶

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.

The Council has previously determined that a custodian is not required to provide records that came into existence after the submission of an OPRA request. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013). Further, OPRA does not contemplate on-going requests for records. *See* Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012)(*citing* Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005)).

The crux of the Complainant's Denial of Access Complaint is based on his allegation that the Custodian did not disclose all correspondence regarding the State Monitor that existed. This is supported by the Complainant's June 4, 2014 e-mail to the GRC advising that he was in receipt of the Letter "that the Custodian falsely certified in the SOI that he provided." Based on the evidence of record, the GRC obtained additional information from the Custodian. Specifically, the Custodian stated that he did not receive the Letter until January 13, 2014. Though the Custodian did not include a legal certification, as required, he did provide documentary evidence supporting his statements.

Notwithstanding the foregoing, a plain analysis of the Letter, which is dated January 8, 2014, indicates that same did not come into existence until after the Complainant submitted his OPRA request, or January 2, 2014. As in Paff, GRC 2012-262 and Paff, GRC 2010-307, the evidence supports that the Letter did not come into existence until six (6) days after submission of the request. Thus, the Custodian was under no obligation to provide the Complainant a record that came into existence after the submission of the OPRA request. *See also* Driscoll v. Sch. Dist. of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008).

⁶ The Custodian's response to the GRC's request for additional information did not include required language as set forth in N.J. Court Rule 1:4-4. Thus, the response is not a valid legal certification as requested by the GRC.

Accordingly, because the Letter did not exist at the time of the Complainant's OPRA request, the Custodian was under no obligation to provide same once he obtained same. Paff, GRC 2010-307; Paff, 2012-262. *See also* Driscoll, GRC 2007-303. Based on the foregoing, the Custodian did not unlawfully deny access to the Letter. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the letter from former New Jersey Department of Education Commissioner Christopher D. Cerf to Superintendent Lynda Anderson-Towns and Woodbine Board of Education President Melissa Rodriguez, dated January 8, 2014, did not exist at the time of the Complainant's OPRA request, the Custodian was under no obligation to provide same once he obtained same. Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012); Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013). *See also* Driscoll v. Sch. Dist. of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008). Based on the foregoing, the Custodian did not unlawfully deny access to the Letter. N.J.S.A. 47:1A-6.

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

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

January 20, 2015