



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

September 29, 2016 Government Records Council Meeting

Charles Street
Complainant

Complaint No. 2015-295

v.

North Arlington School District (Bergen)
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council (“Council”) considered the August 23, 2016 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 the Complainant’s cause of action was not ripe at the time he filed the Denial of Access Complaint on September 16, 2015: the Custodian had not technically denied access to any records at the time of the Complaint’s filing, because the statutorily mandated seven (7) business day time frame for the Custodian to respond had not yet expired. Moreover, the Custodian did ultimately reply in writing on September 23, 2015, within the statutorily mandated time frame. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See Sallie v. N.J. Dep’t of Banking and Ins.*, GRC Complaint No. 2007-226 (April 2009); 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 29th Day of September, 2016

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: October 4, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2016 Council Meeting**

**Charles Street¹
Complainant**

GRC Complaint No. 2015-295

v.

**North Arlington School District (Bergen)²
Custodial Agency**

Records Relevant to Complaint: All pages, notes, letters, etc. contained in the file referred to as Mr. Street’s file. This file is referred to in an e-mail from Andres Pires to Walter Curioni, Ms. Kathleen McEwin-Marano and Dr. Oliver Stringham on March 31, 2015.

Custodian of Record: Kathleen McEwin-Marano
Request Received by Custodian: September 15, 2015
Response Made by Custodian: September 23, 2015
GRC Complaint Received: September 17, 2015

Background³

Request and Response:

On September 14, 2015, at 8:50 PM, the Complainant submitted an Open Public Records Act (“OPRA”) request to the e-mail account of Superintendent Dr. Oliver Stringham, seeking the above-mentioned records. On September 16, 2015, at 10:23 AM, Dr. Stringham wrote to the Complainant from the e-mail account of Andrea Pires, with the e-mail subject of “HIB Investigation,” stating, “[p]ursuant to my August 31, 2015 e-mail, the Board has commenced the HIB investigation that you explicitly requested in your August 27, 2015 e-mail. I am unable to further comment regarding your allegations, as they relate to ongoing litigation between the Board and you. Any communication regarding this litigation should be conducted through your attorney and the Board’s attorney.”

On September 23, 2015, the Custodian responded to the Complainant’s request in writing. She denied the request as overbroad, overly burdensome, and seeking documents that are protected by attorney-client privilege. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 2A:84A-20; MAG

¹ No legal representation listed on record.

² Represented by Stephen R. Fogarty, Esq. (Fair Lawn, 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.

Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).

Denial of Access Complaint:

On September 16, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his request was submitted “separate from any litigation or any OPRA request I have submitted in the past.” He argued that he submitted his request as “the subject of the file” and asserted the Custodian was “wrong” to deny the request. He suggested “that is a way to drive up the costs of legal fees . . .” The Complainant made no additional legal arguments.

Statement of Information:

On October 21, 2015, the Custodian’s Counsel filed a Statement of Information (“SOI”), listing Kathleen McEwin-Marano as the Custodian. The Custodian certified that she received the Complainant’s OPRA request on September 15, 2015, and responded in writing on September 23, 2015, the sixth (6th) business day after receipt. The Custodian listed various reasons for denying the records, noting *inter alia*⁴ that the request was overbroad, overly burdensome, and sought documents that are protected by attorney-client privilege. See N.J.S.A. 47:1A-1.1; N.J.S.A. 2A:84A-20; MAG, 375 N.J. Super. 534; NJ Builders, 390 N.J. Super. 166.

Analysis

Unripe Cause of Action

OPRA provides that “a custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than *seven business days after receiving the request . . .*” N.J.S.A. 47:1A-5(i) (emphasis added). OPRA further states that “[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian’s decision by filing . . . a complaint with the Government Records Council . . .” N.J.S.A. 47:1A-6.

In Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009), the complainant forwarded a complaint to the GRC, asserting that he had not received a response from the custodian and that seven (7) business days would have passed by the time the GRC received the Denial of Access Complaint. The custodian argued in the SOI that the complainant filed the complaint prior to the expiration of the statutorily mandated seven (7) business day time frame set forth in N.J.S.A. 47:1A-5(i). The Council held that:

[B]ecause the Complainant’s cause of action was not ripe at the time he verified his Denial of Access Complaint; to wit, the Custodian had not at that time denied the Complainant access to a government record, the complaint is materially defective and therefore should be dismissed.

⁴ The Custodian made various legal arguments, which are not relevant to the GRC’s determination in this matter. Charles Street v. North Arlington School District (Bergen), 2015-295 – Findings and Recommendations of the Executive Director

Id.; *see also* Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).

In the instant matter, the Complainant argued that the School District violated OPRA because of Dr. Stringham's September 16, 2015 e-mail informing the Complainant that the Board had commenced an HIB investigation and therefore communication regarding that litigation should be conducted with the Board's attorney. The Complainant contended that the aforementioned e-mail contained assertions by Dr. Stringham that "he is unable to provide any documentation to me . . ." However, Dr. Stringham's September 16, 2015 e-mail, which the Complainant attached to his Complaint, did not in fact reference the Complainant's September 14, 2015 OPRA request.

In her Statement of Information, the Custodian certified that she received the Complainant's OPRA request on September 15, 2015, and responded on September 23, 2015, the sixth (6th) business day following receipt and therefore within the statutory deadline for response. The Complainant's Denial of Access Complaint was filed with the GRC on September 16, 2015, and obviously did not include a copy of the Custodian's response, which was submitted to the Complainant days later.

Accordingly, the Complainant's cause of action was not ripe at the time he filed the Denial of Access Complaint on September 16, 2015: the Custodian had not technically denied access to any records at the time of the Complaint's filing, because the statutorily mandated seven (7) business day time frame for the Custodian to respond had not yet expired. Moreover, the Custodian did ultimately reply in writing on September 23, 2015, within the statutorily mandated time frame.⁵ Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See Sallie*, GRC 2007-226; N.J.S.A. 47:1A-5(i).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's cause of action was not ripe at the time he filed the Denial of Access Complaint on September 16, 2015: the Custodian had not technically denied access to any records at the time of the Complaint's filing, because the statutorily mandated seven (7) business day time frame for the Custodian to respond had not yet expired. Moreover, the Custodian did ultimately reply in writing on September 23, 2015, within the statutorily mandated time frame. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See Sallie v. N.J. Dep't of Banking and Ins.*, GRC Complaint No. 2007-226 (April 2009); N.J.S.A. 47:1A-5(i).

Prepared By: Husna Kazmir
Staff Attorney

August 23, 2016⁶

⁵ Because the GRC finds the Complaint unripe for adjudication, the GRC need not address the Custodian's reasons for denying access to the records.

⁶ This complaint could not be adjudicated at the Council's August 30, 2016 meeting due to lack of a quorum.