



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 30, 2019 Government Records Council Meeting

Askiaa J. Nash
Complainant

Complaint No. 2017-37

v.

Newark Public Schools (Essex)
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council (“Council”) considered the April 23, 2019 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 because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. 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 April 2019

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: May 3, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
April 30, 2019 Council Meeting**

**Askiaa J. Nash ¹
Complainant**

GRC Complaint No. 2017-37

v.

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

Records Relevant to Complaint: The record(s) relevant to the denial of access is/are unclear. A copy of an OPRA request form dated “12/27/6” (sic) was attached to the complaint which sought via e-mail the “Newark Public Schools Chunda Stafford-Watson exact date of tenure.”

Custodian of Record: Pamela Luke
Request Received by Custodian: January 4, 2017
Response Made by Custodian: January 4, 2017
GRC Complaint Received: February 22, 2017

Background³

Request and Response:

On January 4, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 4, 2017, the same business day the request was received, the Custodian responded in writing via e-mail informing the Complainant, “. . . attached please find a response.” The e-mail heading showed one (1) attachment which was identified as “OPRA Request.Tenure.pdf.”⁴

Denial of Access Complaint:

On February 22, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The complaint did not contain a date that the request was provided to the Custodian or a date the request was denied. The “Detail Summary” page was blank. The “Records Denied List” was blank. The complaint was devoid of any arguments asserting an

¹ No legal representation listed on record.

² Represented by Brenda C. Liss, Esq., of Riker Danzig Scherer Hyland Perretti LLP (Morristown, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

⁴ It is unknown to the GRC whether the attachment labeled “OPRA Request.Tenure.pdf.” was responsive to the request because a copy of that attachment was not included in the Statement of Information.

unlawful denial. As such, the Complainant failed to provide any argument or support for why he believed he was denied access to the records.

Statement of Information:

On April 20, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 4, 2017 and responded in writing on the same date. The Custodian certified that the request did not seek a government record. The Custodian cited N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) in support of the denial. The Custodian also certified in the alternative that the request was denied because it fell within OPRA’s personnel records exemption, and that the request for a date was not one of the exceptions contained within the exemption. The Custodian cited N.J.S.A. 47:1A-10.

The Custodian attached to the SOI a response dated January 4, 2017; however, the response attachment labeled “OPRA Request.Tenure.pdf.” was not included. The Custodian certified in conclusion that “. . . the complaint filed by Linda D. Walls should be dismissed.”⁵

Analysis

Deficient Complaint

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 complaint is not actionable because the Complainant failed to provide any factual or legal basis alleging he was denied access to government records. In Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014), the complainant’s denial of access complaint lacked any arguments or legal precedent in support of his complaint. The Council found that the custodian did not unlawfully deny access to the OPRA request, in part, because the complainant failed to advance any argument in support of his claim. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014).

Here, the Complainant failed to advance any argument in support of his claim for an unlawful denial of access to records. See Loigman, GRC 2013-242. Nor did the Complainant identify any documents which he believed the Custodian unlawfully failed to disclose. See id. Therefore, the Complainant failed to state a claim on which the GRC could grant relief.

Accordingly, because the Complainant’s Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to government records, the Complainant failed to state

⁵ The GRC does not have any submissions filed by Linda D. Walls for GRC Complaint No. 2017-37.

a claim on which the Council could grant relief. See Loigman, GRC 2013-242; Inzelbuch, GRC 2013-20; Collazo, GRC 2013-310. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that because the Complainant's Denial of Access Complaint lacked any factual or legal basis alleging he was denied access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart
Staff Attorney

April 23, 2019