



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2020 Government Records Council Meeting

Robert Braun (dba Bob Braun Ledger)
Complainant
v.
NJ Department of Education
Custodian of Record

Complaint No. 2018-210

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21, 2020 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 did not unlawfully deny the Complainant access to the records responsive to request item numbers 2 through 5 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 26th Day of February 2020

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: March 3, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2020 Council Meeting**

**Robert Braun (dba Bob Braun's Ledger)¹
Complainant**

GRC Complaint No. 2018-210

v.

**New Jersey Department of Education ²
Custodial Agency**

Records Relevant to Complaint: Concerning the closing of the Lady Liberty Charter School as of July 1, 2018, electronic copies via e-mail of:

Item No. 2: An executed contract between the charter school board and the trustee, including name and contact information.

Item No. 3: A list of creditors and debtors and any amounts accrued and unpaid with respect to such creditor or debtor.

Item No. 4: Notices to creditors and debtors that include final bills and requests for payments.

Item No. 5: The written report to the New Jersey Department of Education by the independent trustee that describes the present value of the charter school's liabilities held by all of its creditors, including but not limited to vendors, banking institutions, state pension and health benefits agencies, child study team providers, resident and non-resident school districts and the present value of the charter school's assets, including but not limited to books, supplies, motor vehicles, furnishings, equipment and personal property.³

Custodian of Record: Jennifer Simons

Request Received by Custodian: July 25, 2018

Responses Made by Custodian: August 3, 2018, August 10, 2018 and August 24, 2018

GRC Complaint Received: September 26, 2018

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Laurie Fichera.

³ There were other records requested that are not relevant to this complaint.

Robert Braun (dba Bob Braun's Ledger) v. New Jersey Department of Education, 2018-210 – Findings and Recommendations of the Executive Director

Background⁴

Request and Responses:

On July 25, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 3, 2018, the seventh (7th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that an extension of time until August 10, 2018 was necessary to conduct a search for responsive records. On August 10, 2018, the Custodian notified the Complainant that an additional extension of time until August 24, 2018 was necessary to conduct a search for responsive records. On August 24, 2018, the Custodian disclosed to the Complainant the record responsive to request item number 1 and informed the Complainant that the agency had no records responsive to the balance of his request.

Denial of Access Complaint:

On September 26, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that, according to the New Jersey Department of Education (“DOE”) website, all closing charter schools must submit a variety of documents to the DOE, including those listed in request item numbers 2 through 5. The Complainant argued that if the school must submit the requested records to the DOE, then logically, the DOE must have received the records. The Complainant stated that the requested records are public records and the Custodian wrongfully denied him access to the records.

Statement of Information:

On October 26, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 25, 2018. The Custodian certified that she responded in writing on August 3, 2018, seeking an extension of time until August 10, 2018, and responded on August 10, 2018, seeking an extension of time until August 24, 2018. The Custodian certified that she “. . . conducted an exhaustive search of the files and email server . . .” and determined that none of the requested records were made, maintained, kept on file or received by the agency except for the record responsive to request item number 1. The Custodian certified that on August 24, 2018, she disclosed to the Complainant the record responsive to request item number 1 and informed the Complainant that the agency had no records responsive to request item numbers 2 through 5.

The Custodian’s Counsel stated that the Complainant asserted in his complaint that the DOE must have received the requested records from the charter school because they were required to have been submitted to the DOE; however, Counsel argued that the Complainant failed to cite any statute or regulation that requires a charter school to file the requested records with the DOE. Counsel stated that, although the DOE’s regulations provide for protocols for the closure of a charter school under N.J.A.C. 6A:11-2.4, there is no requirement for the board of trustees or the

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.

Robert Braun (dba Bob Braun’s Ledger) v. New Jersey Department of Education, 2018-210 – Findings and Recommendations of the Executive Director

independent trustee to file the records requested by the Complainant with the DOE as part of said protocols.

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 Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

Here, the Complainant stated that logically the records responsive to request item numbers 2 through 5 must have been received by the DOE; therefore, the Custodian unlawfully denied him access to the records. The Custodian, however, certified that said records do not exist because they were not made, maintained, kept on file or received by the DOE.

As such, the Custodian did not unlawfully deny the Complainant access to the records responsive to request item numbers 2 through 5 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny the Complainant access to the records responsive to request item numbers 2 through 5 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: John E. Stewart
Staff Attorney

January 21, 2020⁵

⁵ This complaint was prepared for adjudication at the Council’s January 28, 2020 meeting, but could not be adjudicated due to lack of quorum.

Robert Braun (dba Bob Braun’s Ledger) v. New Jersey Department of Education, 2018-210 – Findings and Recommendations of the Executive Director