



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**June 28, 2022 Government Records Council Meeting**

Vvekanand Baliya  
Complainant

Complaint No. 2021-139

v.

Sussex County Technical School  
Custodian of Record

At the June 28, 2022 public meeting, the Government Records Council (“Council”) considered the June 21, 2022 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:

1. Although the Custodian responded in writing to the Complainant’s OPRA request within statutorily mandated time frame to respond, said written response was insufficient pursuant to N.J.S.A. 47:1A-5(i) and Papiez v. Cnty. of Mercer, Office of Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013) because he failed to provide a date certain upon which he would respond to the Complainant providing any responsive records. See also Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011). However, the GRC declines to order disclosure of responsive records because the Custodian did so on July 6, 2021.
2. The Custodian’s response to the subject OPRA request was insufficient because he failed to include a date certain on which the School would respond. N.J.S.A. 47:1A-5(i). However, the Custodian ultimately disclosure 127 pages of responsive records to the Complainant on July 6, 2021. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 28<sup>th</sup> Day of June 2022

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: June 30, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 28, 2022 Council Meeting**

**Vvekanand Balija<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-139**

v.

**Sussex County Technical School<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the following between the time period of September 1, 2018 and April 20, 2021:

1. Any e-mails regarding the Complainant's child between any Sussex County Technical School ("School") administration members and guidance counsellors.
2. Any e-mails regarding the Complainant's child between any School administration members and Ms. Diane Stankiewicz.
3. Any e-mails regarding the Complainant's child between any School guidance counsellors and Ms. Stankiewicz.
4. Any e-mails between Ms. Stankiewicz and the Complainant's child.

**Custodian of Record:** Andrew Italiano

**Request Received by Custodian:** April 21, 2021

**Response Made by Custodian:** April 21, 2021

**GRC Complaint Received:** June 30, 2021

**Background<sup>3</sup>**

**Request and Response:**

On April 16, 2021, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian. On the same day, the Custodian acknowledged receipt of the OPRA request and noted that a response may take longer than "the standard 7 days." On April 19, 2021, the Custodian e-mailed the Complainant seeking clarification of the submitted OPRA request. The Custodian specifically asked that the Complainant provide a date range and particular search terms.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Jonathan N. Frodella, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ).

<sup>3</sup> 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.

On April 20, 2021, the Complainant submitted a clarified OPRA request to the Custodian seeking the above-mentioned records to include a range of dates. The Complainant also disputed the need for additional clarification and asserting that a “simplistic database field search” is the only action required to locate responsive records. On April 21, 2021, the Custodian responded noting that requests seeking e-mails “usually”<sup>4</sup> include search terms, but that he would utilize the date range to have the Information Technology (“IT”) department perform a search on that day. The Custodian subsequently responded in writing, the same business day as receipt of the clarified OPRA request, advising that IT located 700 e-mails that would need to be reviewed for responsiveness and redactions. The Custodian stated that upon completion of the review, the School would disclose the responsive records.

On May 4, 2021, the Complainant e-mailed the Custodian seeking a status update on the subject OPRA request. The Complainant noted that eighteen (18) days passed since he submitted the OPRA request and, while he understands that the Custodian advised that more than seven (7) business days would be required, “we are now rapidly approaching triple that time . . .” On the same day, the Custodian responded advising that review of the e-mails remained ongoing. The Custodian noted that OPRA permitted him to take “more time if the request is substantial . . .”

On June 15, 2021, the Complainant sought a status update noting that almost two (2) months had passed without disclosure. The Complainant demanded a date certain on which the Custodian would respond, or he would consider the delay a denial of access. On June 16, 2021, the Custodian responded by e-mail asserting that the School had responded properly and that the attorney was still reviewing “a mass amount of e[-]mails.” On the same day, the Complainant responded again demanding a date certain on which he would receive responsive records.

#### Denial of Access Complaint:

On June 30, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that notwithstanding multiple attempts to get the Custodian to comply with his OPRA request, he had not received any responsive records to date. The Complainant noted that the last communication he had with the Custodian was on June 16, 2021.

#### Supplemental Response:

On July 6, 2021, the Custodian e-mailed the Complainant disclosing 127 pages of responsive e-mails. The Custodian noted that he expedited this response to show that the School took the complaint seriously and asked that the Complainant withdraw same now that records had been disclosed. On the same day, the Complainant responded stating that he would not withdraw this complaint because it took “nearly 11 weeks” and multiple follow-up e-mails to disclose records, but only days after the filing of this complaint. The Complainant stated that he would allow the adjudication process to continue to illuminate himself on why it took so long for the School to comply with his OPRA request.

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<sup>4</sup> The GRC notes that the criteria set forth in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-7 (April 2010) for a valid request seeking e-mails are: 1) sender and/or recipient; 2) date or ranges of dates; 3) subject or content.

### Statement of Information:

On July 6, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s clarified OPRA request on April 21, 2021. The Custodian certified that the School’s search involved IT performing a search of e-mail servers utilizing the criteria contained in the Complainant’s clarified OPRA request. The Custodian certified that he ultimately responded in writing on July 6, 2021 disclosing to the Complainant 127 pages of e-mails without redactions.

The Custodian contended that the School could not respond quickly to the subject OPRA request because of its breadth and vagueness. The Custodian asserted that further complications arose when the School’s attorney<sup>5</sup> could not access the potentially responsive e-mails at the time that IT located same. The Custodian noted that this inability was further exacerbated by a misunderstanding between the School and attorney as to the technological issues with accessing and reviewing the potentially responsive e-mails. The Custodian averred that this issue was not discovered until after the Complainant filed this complaint.

The Custodian noted that the School has successfully completed multiple OPRA requests over the last few years to include voluminous requests. The Custodian asserted that responding to this OPRA request was the result of the technical issue described above. The Custodian contended that because he disclosed the responsive records just prior to submitting the SOI, and without contention of this fact from the Complainant, this complaint should be dismissed as moot.

### Analysis

#### Sufficiency of Response

OPRA provides that a custodian may have an extension of time to respond to a complainant’s OPRA request, but the custodian must provide a date certain. N.J.S.A. 47:1A-5(i). OPRA further provides that should the custodian fail to provide a response on that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5(i).

In Papiez v. Cnty. of Mercer, Office of Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013), the custodian responded in a timely manner seeking an extension of time; however, she failed to identify a date certain on which she would respond. The Council determined that, although the custodian timely sought an extension of time, she failed to provide a date certain on which she would respond. N.J.S.A. 47:1A-5(i). Citing Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008).

Here, upon the Complainant’s submission of the original OPRA request, the Custodian noted that a response may take longer than “the standard 7 days.” Following submission of the clarified OPRA request, the Custodian responded in writing on the same business day stating that 700 e-mails were located and would need to be reviewed prior to disclosure. However, the Custodian did not provide a date certain on which he would respond to the Complainant’s OPRA

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<sup>5</sup> It is not clear whether the Custodian was referring to Custodian’s Counsel or another attorney representing the School.

request. The Complainant pressed the Custodian for a date certain in e-mails on May 4, 2021, as well as June 15, and 16, 2021. However, the Custodian merely reasserted his ability to extend the time frame and advised that Complainant that the e-mail review remained ongoing.

All the forgoing taken together indicates the Custodian's asserted need for an extension of time to comply with the subject OPRA request. However, absent from any of the Custodian's responses is a date certain on which he would respond. Such a date is required per N.J.S.A. 47:1A-5(i) and a custodian's failure to do so has routinely resulted in an insufficient response finding. Papiez, GRC 2012-59. See also Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011); Percella v. City of Bayonne (Hudson), GRC Complaint No. 2020-73 (May 2021). Thus, a similar holding that an insufficient response occurred here is appropriate.

Therefore, although the Custodian responded in writing to the Complainant's OPRA request within statutorily mandated time frame to respond, said written response was insufficient pursuant to N.J.S.A. 47:1A-5(i) and Papiez, GRC 2012-59 because he failed to provide a date certain upon which he would respond to the Complainant providing any responsive records. See also Bentz, GRC 2008-89. However, the GRC declines to order disclosure of responsive records because the Custodian did so on July 6, 2021.

### **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's response to the subject OPRA request was insufficient because he failed to include a date certain on which the School would respond. N.J.S.A. 47:1A-5(i). However, the Custodian ultimately disclosure 127 pages of responsive records to the Complainant on July 6,

2021. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian responded in writing to the Complainant's OPRA request within statutorily mandated time frame to respond, said written response was insufficient pursuant to N.J.S.A. 47:1A-5(i) and Papiez v. Cnty. of Mercer, Office of Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013) because he failed to provide a date certain upon which he would respond to the Complainant providing any responsive records. See also Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011). However, the GRC declines to order disclosure of responsive records because the Custodian did so on July 6, 2021.
  
2. The Custodian's response to the subject OPRA request was insufficient because he failed to include a date certain on which the School would respond. N.J.S.A. 47:1A-5(i). However, the Custodian ultimately disclosure 127 pages of responsive records to the Complainant on July 6, 2021. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Executive Director

June 21, 2022