



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 27, 2023 Government Records Council Meeting

The Edison Reporter
Complainant

Complaint No. 2021-177

v.

Edison Public School District (Middlesex)
Custodian of Record

At the June 27, 2023 public meeting, the Government Records Council (“Council”) considered the June 20, 2023 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 Council should dismiss the complaint because the Complainant withdrew the matter via e-mail on June 12, 2023. Therefore, no further adjudication is required.

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 27th Day of June 2023

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 29, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 27, 2023 Council Meeting**

**The Edison Reporter¹
Complainant**

GRC Complaint No. 2021-177

v.

**Edison Public School District (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Copies of e-mails between Edison Public School District (“District”) Board members regarding “Whitson[‘]s Food Services, Aramark, Maschio’s Food Services, Pomptonian Food Services, Chartwells,” the Food Services Committee, or a Food Services Committee meeting from January 1, 2021 through July 1, 2021.

Custodian of Record: Dr. Bernard F. Bragen, Jr.³

Request Received by Custodian: July 1, 2021

Response Made by Custodian: July 30, 2021

GRC Complaint Received: August 2, 2021

Background⁴

Request and Response:

On July 1, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 12, and 14, 2021, the Complainant e-mailed the Custodian seeking a status update on his pending OPRA request. On July 15, 2021, the Custodian e-mailed the Complainant and requested that he “secure an appropriate OPRA request form” so that the request “can be properly evaluated.” On the same day, the Complainant e-mailed the Custodian advising that he was not required to complete an official OPRA request form. Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009).

On July 26, 2021, the Complainant contacted the Government Records Council (“GRC”) for guidance and received same the following day. On July 28, 2021, the Complainant e-mailed the Custodian stating that he would file a complaint if he did not receive a response to his OPRA request. On July 30, 2021, the Custodian responded in writing denying records responsive to the

¹ No legal representation listed on record.

² Represented by Ryan Windels, Esq., of King, Moench & Collins, LLP (Morris Plains, NJ). Previously represented by William F. Rupp, Esq. of McCusker, Anselmi, Rosen & Carvelli, P.C. (Florham Park, NJ).

³ Dr. Bragen departed the District in December 2022. The current custodian of record is Jonathan Toth.

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.

Complainant's OPRA request under the "inter-agency or intra-agency advisory, consultative or deliberative ["ACD"] material" and "advantage to competitors or bidders" exemptions. N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On August 2, 2021, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant disputed the Custodian's denial of access but did not include any additional arguments supporting his position.

Statement of Information:

On August 20, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on July 1, 2021. The Custodian certified that his search included contacting District Information Technology personnel to perform a search for responsive e-mails. The Custodian certified that he initially responded in writing on July 15, 2021 asking the Complainant to submit his request on the District's official OPRA form. The Custodian certified that he subsequently responded again on July 30, 2021 denying access to responsive e-mails under the ACD and "advantage" exemptions. N.J.S.A. 47:1A-1.1.

The Custodian affirmed that the District solicited a "Request for Proposal" ("RFP") for food services with a due date of June 4, 2021. The Custodian certified that the Food Services Committee met on June 9, 2021 and discussed the RFP submissions. The Custodian averred that the Board ultimately adopted a resolution on June 29, 2021 selecting Maschio's Food Services. The Custodian stated that the Complainant filed his OPRA request shortly thereafter.

The Custodian contended that he lawfully denied access to twenty-four (24) responsive e-mails under the ACD exemption. N.J.S.A. 47:1A-1.1. The Custodian stated that the responsive e-mails contained ongoing discussions, recommendations, and opinions concerning the bids received and the meetings at which Committee members deliberated on same. The Custodian asserted that all e-mails were also pre-decisional; thus, they fell within the ACD exemption as described in O'Shea v. West Milford Bd. of Educ., GRC Complaint No. 2004-93 (April 2004).

The Custodian noted that after additional review, the contents of the responsive e-mails did not appear to contain any information that would present an advantage to competitors or bidders. The Custodian contended that notwithstanding the forgoing, the District reserved its right to assert the exemption should new information be gleaned from the e-mails that fall therein.

May 30, 2023 Council Meeting:

At its May 30, 2023 public meeting, the Council considered the May 23, 2023 Administrative Order and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said Order holding that:

The GRC must conduct an *in camera* review of all responsive e-mails (and attachments, if any) to determine the validity of the Custodian's assertion that those records were exempt under the cited exemptions. N.J.S.A. 47:1A-1.1. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346, 355 (App. Div. 2005). **Thus, the Custodian shall deliver⁵ to the Council in a sealed envelope nine (9) copies of the requested unredacted e-mails and a document index.⁶**

This is an Administrative Order requiring compliance within ten (10) business days after receipt thereof. The Custodian shall also simultaneously deliver⁷ certified confirmation of compliance with this Order, in accordance with N.J. Court Rules, R. 1:4-4,⁸ to the Executive Director.

Procedural History:

On June 5, 2023, the Council distributed its Administrative Order to all parties.

On June 12, 2023, the Complainant e-mailed the GRC stating that he wished to withdraw this complaint. On June 14, 2023, the GRC e-mailed the parties acknowledging receipt of the Complainant's intent to withdraw this complaint and noted that the May 30, 2023 Order was moot.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council should dismiss the complaint because the Complainant withdrew the matter via e-mail on June 12, 2023. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Executive Director

June 20, 2023

⁵ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

⁶ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁷ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁸ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."



NEW JERSEY GOVERNMENT RECORDS COUNCIL
Administrative Order – *In Camera* Review

The Edison Reporter
Complainant

GRC Complaint No. 2021-177

v.

Edison Public School District (Middlesex)
Custodial Agency

Custodian of Record: Bernard F. Bragen, Jr.
Request Received by Custodian: July 1, 2021
GRC Complaint Received: August 2, 2021

Order: The GRC must conduct an *in camera* review of all responsive e-mails (and attachments, if any) to determine the validity of the Custodian's assertion that those records were exempt under the cited exemptions. N.J.S.A. 47:1A-1.1. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346, 355 (App. Div. 2005). **Thus, the Custodian shall deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted e-mails and a document index.²**

This is an Administrative Order requiring compliance within ten (10) business days after receipt thereof. The Custodian shall also simultaneously deliver³ certified confirmation of compliance with this Order, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.

Effective Date of Disposition: May 30, 2023

Prepared By: Frank F. Caruso
Executive Director

Date: May 23, 2023

Distribution Date: June 5, 2023

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."