



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

JACQUELYN A. SUÁREZ  
*Acting Commissioner*

### FINAL DECISION

#### April 30, 2024 Government Records Council Meeting

Douglas Harle  
Complainant

Complaint No. 2022-161

v.

New Milford Board of Education (Bergen)  
Custodian of Record

At the April 30, 2024 public meeting, the Government Records Council (“Council”) considered the April 23, 2024 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. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 1. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to the Forms sought in OPRA request item No. 2. N.J.S.A. 47:1A-6. Specifically, the Forms are clearly personnel records that do not fall within the excepted categories requiring disclosure. N.J.S.A. 47:1A-10; O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009).
3. Because the Custodian did not deny access to a “blank copy” of the Form identified as OPRA request item No. 3 because the Complainant did not request it, this portion of the complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e); Burns v. N.J. Dep’t of State, Div. of Elec., GRC Complaint No. 2013-64 (September 2013).

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 30<sup>th</sup> Day of April 2024

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 2, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 30, 2024 Council Meeting**

**Douglas Harle<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-161**

v.

**New Milford Board of Education (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint: Copies of:<sup>3</sup>**

1. “[L]ive paychecks’ issued to Michelle Williams-Harle from September 1, 2011, to present to include the front and back copies of the checks and[/]or paystubs.”
2. “Certification of Payroll Deductions Teacher’s Pension and Annuity Fund” form (“Form”).
3. “Blank copy of [No.] 2 to show the full form used by employees.”

**Custodian of Record: Dr. Stephanie E. Kuchar<sup>4</sup>**

**Request Received by Custodian: January 6, 2020; March 2, 2020; March 9, 2022**

**Response Made by Custodian: January 15, 2020; March 6, 2020; March 18, 2022**

**GRC Complaint Received: April 22, 2022**

**Background<sup>5</sup>**

Request and Response:

OPRA request No. 1:

On January 1, 2020, the Complainant purportedly submitted an Open Public Records Act (“OPRA”) request<sup>6</sup> to Superintendent Michael Polizzi seeking the following records:

1. “All forms used to create [Ms. Harle’s] ‘annuity account’ and all forms used to increase or change her annuity deductions from June 2014 to present . . . without redacted size cutting-off required information [sic.]. The full form must be visible.”

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

<sup>2</sup> Represented by Vittorio S. LaPira, Esq., of Fogarty & Hara, Esqs. (Fair Lawn, NJ).

<sup>3</sup> The records listed are quoted from the Denial of Access Complaint filing. The Complainant’s three (3) OPRA requests sought additional records that are not at issue in this complaint.

<sup>4</sup> The original Custodian of Record was Interim Business Administrator Bruce Watson.

<sup>5</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.

<sup>6</sup> This OPRA request was in the form of a letter containing the date January 14, 2020.

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2. “Copies of all paper checks issued to Ms. Harle from January 2014 to the present . . . to contain the front and back of the checks so any bank deposit information written or printed therein are clearly visible . . .”

On January 15, 2020, the original Custodian responded in writing stating that Superintendent Polizzi forwarded the Complainant’s OPRA request and asked him to review his files for any prior requests that went unanswered. The original Custodian noted that he conducted his search and only identified one (1) prior OPRA request filed on October 4, 2016. The original Custodian stated that based on a letter from a former New Milford Public School District (“District”) employee attached to the subject OPRA request, the Complainant received all payroll records sought.<sup>7</sup> The original Custodian stated that the Complainant could submit a new OPRA request if so chose and noted that upon receipt, the District would timely and properly respond.

OPRA request No. 2:

On March 2, 2020, the Complainant submitted an OPRA request to the original Custodian containing the same verbiage of his January 1, 2020 OPRA request. On March 6, 2020, the original Custodian responded in writing obtaining an extension of time through March 20, 2020 to respond to the subject OPRA request due to the voluminous number of responsive records and presence of sensitive material therein. On March 20, 2020, Custodian Counsel’s Firm responded in writing again extending the response time frame through March 31, 2020 due to the volume of responsive records and onset of the COVID-19 pandemic. On March 23, 2020, the original Custodian responded in writing denying access to both request items because no responsive records exist. The Custodian further noted that “paper checks” would be exempt from disclosure under Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”). The Custodian finally noted that that even if the District were in possession of completed “annuity forms,” they would be exempt from disclosure under N.J.S.A. 47:1A-10; O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009).

OPRA Request No. 3:

On March 9, 2022, the Complainant submitted another OPRA request to the Custodian seeking the following records:<sup>8</sup>

1. “Copies of all paychecks issued to Ms. [Harle] . . . to include the front and back of all ‘live checks’ issued to Ms. Harle from September 9, 2011, to the present and any electronic payroll records or paystubs attached to the checks.”

On March 18, 2022, the Custodian responded in writing extending the response time frame an additional seven (7) business days. The Custodian noted that records responsive to the above request item would be granted to the extent they exist. The Custodian further noted that the District previously disclosed “pay stubs through January 2021.” The Custodian requested that the Complainant confirm whether he still sought these records dating back to September 2011.

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<sup>7</sup> The original Custodian also noted that the Complainant admitted that he had been sending OPRA requests directly to the former employee, who left the District two (2) years earlier.

<sup>8</sup> This OPRA request also included several additional items that are not at issue in this complaint.

### Denial of Access Complaint:

On April 22, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the District never disclosed any “live paychecks” responsive to OPRA request item No. 1 since his “first request going back to 2016.” The Complainant further argued that three (3) records allegedly disclosed in response to OPRA request item No. 2 were altered to remove a third of the documents to “hide dates when submitted” and another record was “omitted.” The Complainant finally argued that the Custodian never disclosed a record responsive to OPRA request item No. 3. The Complainant included in his Denial of Access Complaint a complaint sent to the Rockland County Sheriff’s Office attaching multiple documents related to Ms. Harle.

### Statement of Information:

On June 3, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the District received the Complainant’s OPRA requests on January 6, 2020; March 2, 2020; and March 9, 2022 respectively. The Custodian averred that the original Custodian did not conduct a search in connection with the January 1, 2020 OPRA request because he denied it outright. The Custodian further averred that the original Custodian searched the District payroll records in connection with the March 2, 2020 OPRA request and determined no responsive records existed. The Custodian finally affirmed that she did not conduct a search in connection with the March 9, 2022 OPRA request because she determined the records sought were exempt from disclosure.

The Custodian stated that since December 2016, the Complainant made multiple OPRA requests in connection with divorce proceedings. The Custodian averred that during that time, the District has provided the Complainant with voluminous records, including over 100 pages of records ten (10) days into the COVID-19 pandemic. The Custodian noted that the Complainant’s requests were often similar and resulted in consistent responses from the District. The Custodian also argued that the District lawfully denied access to the items at issue in this complaint.

The Custodian asserted that regarding OPRA request item No. 1, she acknowledges that her initial response was to disclose records if they existed. The Custodian asserted that she subsequently determined that the District did not possess such records, but that they would have been exempt anyway as personnel records not subject to the “payroll record” exception. Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004); EO 26. The Custodian noted that she gave this explanation to the Complainant in an April 28, 2022 response to a renewed OPRA request.

The Custodian asserted that regarding OPRA request item No. 2, the Complainant’s actual OPRA request verbiage was not sufficient to indicate to the District that he was actually seeking copies of Ms. Harle’s submitted Forms. The Custodian argued that seeking annuity information is not that same as identifying a specific record. The Custodian further argued that even if the records in question existed, the original Custodian already advised that same would not be subject to access under N.J.S.A. 47:1A-10 and O’Shea, GRC 2008-283. The Custodian argued that the Complainant is thus not entitled to any deduction information of a public employee regardless of the circumstances prompting him to submit his OPRA request.

The Custodian asserted that the District was particularly confused by the Complainant's assertion that he received Forms that were redacted and "cut-off." The Custodian certified that upon conducting additional research into this assertion, it was determined that a former District employee disclosed the Forms to the Complainant in error. The Custodian noted that a brief review of the Forms attached to the Denial of Access Complaint only further supports the District's position that they are not disclosable personnel records. The Custodian also contended that because she did not disclose those Forms, the GRC should uphold her lawful denial here.

The Custodian asserted that regarding OPRA request item No. 3, the District is confused as to why same is at issue. The Custodian noted that the Complainant did not request a "blank copy" of the Form. The Custodian argued that the District cannot unlawfully deny access to a record that was not requested in the first instance.

The Custodian finally argued that any assertion that the District was purposely trying to conceal information to aid Ms. Harle is "fabricated out of whole cloth, and [is] inconsistent with the facts." The Custodian argued that the District has no interest in the divorce proceedings and has no intent to become involved in same. The Custodian argued that the District has complied with each of the OPRA requested submitted and provided proper responses thereto. The Custodian thus requested that the GRC dismiss this complaint.

#### Additional Submissions:<sup>9</sup>

On June 16, 2022, the Complainant submitted a rebuttal to the SOI. Therein, the Complainant first argued that it was unclear which portions of the SOI were completed by the Custodian and which were completed by Custodian's Counsel. The Complainant demanded that the GRC require each to file a separate SOI.<sup>10</sup> The Complainant next argued that many statements made in the SOI were "not truthful . . ." The Complainant argues that for example, the District certified that no Forms existed in the document index, but then attached said Form as an exhibit.

On July 11, 2022, Custodian's Counsel submitted a letter brief arguing that the Complainant's rebuttal contains meritless arguments. Counsel further argued that the only issue properly before the GRC is the disclosability of live checks and Forms. Counsel argued that the District has already argued that same are exempt from disclosure under N.J.S.A. 47:1A-10 because neither falls under the "payroll record" exemption. Jackson, GRC 2022-98; O'Shea, GRC 2008-283. Counsel argued that whether the Complainant previously received records either through discovery associated with the underlying divorce proceedings or erroneously from a prior District employee does not change the fact that the personnel exemption still applies to the requested records.

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<sup>9</sup> The Complainant's rebuttal and Counsel's July 11, 2022 response were actually submitted in relation to Harle v. New Milford Bd. of Educ. (Bergen), GRC Complaint No. 2022-173 (concurrently being adjudicated with this complaint). However, some arguments appeared to apply to both complaints, for which the SOIs were submitted on the same day. The GRC notes that due to the complexity of each complaint, the GRC has chosen to not consolidate them.

<sup>10</sup> The GRC notes that this issue is of no moment because the Custodian has signed the SOI thus attesting to the veracity of all contents included therein. The Complainant also raised other issues with the SOI response that will not be addressed because they do not constitute a valid reason compelling the GRC to return the SOI as incomplete. Douglas Harle v. New Milford Board of Education (Bergen), 2022-161 – Findings and Recommendations of the Executive Director

Counsel asserted that this is especially true of the Forms sought in OPRA request item No. 2, which obviously contain personal financial deduction information about a voluntary annuity program. Counsel also noted that because the Complainant has now clearly shown he intended to seek identifiable records, he wished to amend the SOI document index from the statement that no records existed to five (5) such Forms exist and are exempt. Counsel further noted that the blank and alleged “cut-off” columns had no information in them.

## 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.

#### OPRA request item No. 1

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant asserted that he was unlawfully denied access to OPRA request item No. 1 seeking copies of “live checks” including the front and back of each reflecting bank deposit information from September 1, 2011 to present. The Custodian initially asserted that records, to the extent they existed, would be provided. However, after the filing of this complaint, the Custodian certified that the District did not maintain such checks. The Custodian also argued that same would be exempt from disclosure anyway under N.J.S.A. 47:1A-10 and EO 26.

Upon review of the evidence of record,<sup>11</sup> the GRC is satisfied that a lawful denial of access occurred here. The Complainant is plainly seeking a copy of the individual checks that Ms. Harle endorsed and deposited in her personal bank account. There is no evidence in the record to suggest that the District, let alone any public agency, would be in possession of endorsed, deposited payroll checks. In the absence of any such competent, credible evidence to refute the certification,<sup>12</sup> Pusterhofer applies here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 1. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

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<sup>11</sup> The GRC notes that the OPRA request item No. 1 includes a combination of time frames from OPRA request Nos. 1 and 3 but also expands the identified time period by eight (8) additional calendar days: from “September 9, 2011” in the March 9, 2020 OPRA request to “September 1, 2011” in the complaint.

<sup>12</sup> The GRC notes that the Complainant attached to the Denial of Access Complaint a bank statement received as part of discovery in the underlying divorce case (according to a letter composed by the Complainant’s attorney dated April 28, 2017 also included in the complaint). That statement included images of endorsed and deposited checks; however, it is obvious that the statement did not come from the District.

Finally, the GRC notes that because no responsive records exist, it does not address whether such records are exempt from disclosure on the bases advanced by the Complainant.

### OPRA request item No. 2

OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 592 (2011). Further, the personnel record exemption may apply to records that “. . . bear many of the indicia of personnel files.” N. Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

Regarding payroll records, in Jackson, GRC 2002-98, the Council was tasked with defining the term “payroll record” because that term is not addressed in OPRA. The Council looked to the ordinary meaning of the term as set forth in Black’s Law Dictionary (7th Ed., 1999) and N.J.A.C. 12:16-2.1, a Department of Labor regulation entitled “Payroll records.” The Council held that “payroll” records referred to the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an “employer” as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

[Id.]

However, the definition of a “payroll record” does not include individual employee deductions. Specifically, in O’Shea, GRC 2008-283, the complainant challenged the custodian’s redaction of paycheck deductions made to a payroll check register. The Council held that while the register itself fell within the definition of a “payroll records,” the custodian lawfully redacted the itemized deductions because they were not considered “payroll” information. Id. at 7 (citing N.J.S.A. 47:1A-10; EO 26). The Appellate Division reached a similar conclusion in Wolosky v. Borough of Wash., 2017 N.J. Super. Unpub. LEXIS 2868 (App. Div. 2017), holding that the



custodian properly redacted individual pension and health insurance payments within a payroll register. Id. at 5, 7.

Here, the Complainant asserted that he was unlawfully denied access to OPRA request item No. 2 seeking Ms. Harle's Forms. The original Custodian initially advised that no records existed, but that same would be exempt from disclosure under OPRA per N.J.S.A. 47:1A-10 and O'Shea, GRC 2008-283. The Complainant did not include a similar request item in his March 9, 2022 OPRA request submitted to the Custodian. In the SOI, the Custodian argued that the Complainant failed to specifically identify the Forms as the records sought. The Custodian further argued that notwithstanding the validity issue, any Forms were exempt from disclosure for the reasons cited by the original Custodian. Following receipt of the Complainant's rebuttal regarding the existence of Forms, Custodian's Counsel reiterated the District's position on the validity of the Complainant's actual requests. Counsel further averred that armed with clarification from the Denial of Access Complaint, he confirmed that five (5) Forms existed. Counsel nonetheless argued that same were exempt from disclosure under the personnel exemption and that any prior District disclosures of same were unlawful.

Initially, the GRC notes that the Complainant's OPRA requests tacitly seeking Forms could invoke a validity issue. Specifically, the Complainant attached to his complaint a previously disclosed Form; he obviously sought access to "full form" versions of those previously disclosed. However, the Complainant instead chose to craft his OPRA requests circuitously instead of identifying that he was seeking the Forms. It was not until the Denial of Access Complaint that he finally directly identifies the records sought. Thus, it is reasonable to assume that the original Custodian may have not been able to readily determine that the Complainant was actually seeking Forms. Notwithstanding, the GRC now has confirmation that five (5) such records exist and will address the disclosability thereof.

Upon review of both the Forms attached to both the Denial of Access Complaint and SOI, the GRC is satisfied that the Forms are personnel records clearly exempt from disclosure. First, the Forms obviously relate directly to Ms. Harle's employment with the District. Thus, they clearly have the indicia of a personnel record regardless of whether or not they were placed directly in Ms. Harle's personnel file. Second, the Forms do not fit within any of the excepted categories of personnel information required to be disclosed. That is, the records cannot be classified as "payroll records" because they do not fit within the definition of such contemplated under Jackson. Instead of showing the amount of remuneration paid, the Forms show Ms. Harle's financial decisions on how to manage that remuneration upon receipt. Such documentation is directly in line with the precedential determination that this type of deduction information is exempt from disclosure under N.J.S.A. 47:1A-10. See O'Shea, GRC 2008-283. Further, prior disclosure by a District employee to the contrary of the forgoing does not prevent the District from lawfully denying access thereto after the fact.

Accordingly, the Custodian lawfully denied access to the Forms sought in OPRA request item No. 2. N.J.S.A. 47:1A-6. Specifically, the Forms are clearly personnel records that do not fall within the excepted categories requiring disclosure. N.J.S.A. 47:1A-10; O'Shea, GRC 2008-283.

### OPRA request item No. 3

In Burns v. N.J. Dep't of State, Div. of Elec., GRC Complaint No. 2013-64 (September 2013), the Council found that the complainant contested a denial of access to records she did not originally request. The Council concluded that the complaint was therefore without merit because no denial of access had occurred (citing N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7(e)).

Here, the Complainant asserted that he was unlawfully denied access to OPRA request item No. 3 seeking a “blank copy” of the Form. However, as in Burns, GRC 2013-64, the Complainant never requested such record in any of the three (3) OPRA requests he identified as at issue here. The GRC is therefore satisfied that this portion of the complaint is without merit because no denial of access occurred.

Accordingly, because the Custodian did not deny access to a “blank copy” of the Form identified as OPRA request item No. 3 because the Complainant did not request it, this portion of the complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e); Burns, GRC 2013-64.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 1. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to the Forms sought in OPRA request item No. 2. N.J.S.A. 47:1A-6. Specifically, the Forms are clearly personnel records that do not fall within the excepted categories requiring disclosure. N.J.S.A. 47:1A-10; O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009).
3. Because the Custodian did not deny access to a “blank copy” of the Form identified as OPRA request item No. 3 because the Complainant did not request it, this portion of the complaint is without merit and should be dismissed. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e); Burns v. N.J. Dep’t of State, Div. of Elec., GRC Complaint No. 2013-64 (September 2013).

Prepared By: Frank F. Caruso  
Executive Director

April 23, 2024