



State of New Jersey

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Acting Commissioner

FINAL DECISION

April 30, 2024 Government Records Council Meeting

Douglas Harle
Complainant

Complaint No. 2022-173

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 because the Custodian did not deny access to the records the Complainant asserted were at issue in this complaint because he did not request them, this 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 30th 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 Harle¹
Complainant**

GRC Complaint No. 2022-173

v.

**New Milford Board of Education (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Copies of:³

1. “Payroll [r]ecords” indicating dates of pay during the summer of 2015 and 2017, including amount paid, copies of “payment method and dates of payment and amount paid.”
2. A blank, “full-sized” copy of the “Certification of Payroll Deductions Teacher’s Pension and Annuity Fund” form (“Form”).
3. Summer paychecks issued in 2015 and 2016.
4. “Payroll Register Missing Summer Paychecks Proof and Dates Paid.”

Custodian of Record: Dr. Stephanie E. Kuchar
Request Received by Custodian: April 19, 2022
Response Made by Custodian: May 2, 2022
GRC Complaint Received: May 5, 2022

Background⁴

Request and Response:

On April 12, 2022, the Complainant purportedly submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the following records:

“[A]ll copies of Michelle Williams-Harle’s ‘live’ checks that were issued from the start of her employment to the present . . . to include the front and back of them to see where and who cashed them. . . [also] every form submitted by Ms. Harle to alter her payroll information in any way since the start of her employment.”

¹ No legal representation listed on record.

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

³ The records listed are quoted from the Denial of Access Complaint filing. The Complainant’s OPRA request sought additional records that are not at issue in this complaint.

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.

The Complainant noted that he contacted “ADP payroll and they stated they have copies of the checks,” but the District has not provided them.

On May 2, 2022, the Custodian responded in writing emailing the Complainant an April 28, 2022 letter.⁵ Therein, the Custodian denied access to the Complainant’s OPRA request under the personnel records exemption. N.J.S.A. 47:1A-10. The Custodian stated that neither of the records identified in the OPRA request qualify as “payroll records” required to be disclosed. Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Custodian also noted that the Complainant previously received payroll register records containing Ms. Harle’s pay information.

Denial of Access Complaint:

On May 5, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the New Milford Public School District (“District”) has for the third (3rd) time failed to disclose checks issued to an employee thereof. The Complainant argued that Ms. Harle received “summer savings disbursement checks” in the summer of 2016, but that the Custodian “intentionally . . . deleted their data from the payroll records that she falsely claims” were disclosed to him.

The Complainant contended that Ms. Harle entered this program created under the collective bargaining contract in September 2015. The Complainant alleged that this program allowed participants to “reduce their bi-weekly pay by approximately 18%” by depositing that amount in a savings account held with the District. The Complainant argued the money is then paid to participants during the summer. The Complainant stated that he attached a bank statement showing proof of an August 2016 check deposited by Ms. Harle. The Complainant contended that none of these summer payments were included in the disclosed payroll registers.

The Complainant further argued that the Custodian “[r]efused” to supply a blank Form and did not provide a specific lawful basis for such a denial. 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 she received the Complainant’s OPRA request on April 19, 2022, noting that the District was closed the prior week. The Custodian averred that she did not conduct a search in connection with the OPRA request because those records sought were not disclosable. The Custodian affirmed that she responded in writing on May 2, 2022 attaching a letter dated April 28, 2022 that denied the Complainant’s OPRA request, which did not seek the records he now claims are at issue in this complaint.

⁵ Although the response was dated April 28, 2022, it was not transmitted to the Complainant until May 2, 2022 and beyond the statutorily mandated response time frame thus resulting in a “deemed” denial. However, the GRC will not address this issue because the Complainant did not raise it in the complaint.

The Custodian stated that since December 2016, the Complainant made multiple OPRA requests in connection with divorce proceedings. The Custodian averred that the District has been responsive to each of those requests in a timely fashion either disclosing records or providing a specific lawful basis therefor. The Custodian argued that to the extent the Complainant asserted that the District acted improperly to assist Ms. Harle in those proceedings, it should be noted that it has no involvement or interest in becoming involved therein. The Custodian argued that the Complainant filed the current complaint combining elements of various prior OPRA requests for which he believed were not disclosed to him. The Custodian averred that the District already disclosed a payroll register to the Complainant covering September 2011 through December 2020, which was the identified time period at issue here.

The Custodian contended that the Complainant appears to misunderstand the records provided and how the “Summer Savings Plan” (“Plan”) worked for District employees. The Custodian stated that each payroll register provides every paycheck made to Ms. Harle, a ten-month employee of the District who received her “gross pay” in twenty (20) installments. The Custodian affirmed that the register shows every one of those checks, in addition to six (6) more checks associated with stipends and *per diem* work. The Custodian averred that Ms. Harle did not receive additional payments through the Plan; instead, she was paid the deferred balance of her gross annual salary deducted from her regular paychecks. The Custodian noted that the deductions appear in the payroll register, but she redacted the amount under O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009).

The Custodian likened the Plan to an employee splitting their paycheck into separate bank accounts; in this case one of those accounts was administered by the District. The Custodian averred that the Plan effectively allows employees into a “forced” savings plan which is subsequently dispersed in four (4) equal payments. The Custodian argued that these payments are not paychecks that would show on a payroll register; an employee received that money already as part of their regular paycheck. The Custodian thus argued that neither she nor the District lied or intentionally omitted any information. The Custodian argued that instead, the Complainant is attempting to determine Ms. Harle’s “net pay,” as opposed to her “gross pay”, to which the Complainant is not entitled under OPRA.

The Custodian contended that regarding OPRA request No. 1, the District has already disclosed the payroll registers showing Ms. Harle’s “gross pay.” The Custodian contended that the Complainant is not entitled to access any itemized deductions under OPRA. O’Shea, GRC 2008-283. The Custodian reiterated that he was not entitled to “net pay” information, and could avail himself of alternate options (such as discovery or subpoenas) to obtain same directly from Ms. Harle.

The Custodian asserted that regarding OPRA request item No. 2, 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 asserted that regarding OPRA request item No. 3, the Complainant did not specifically request “summer paychecks.” The Custodian nonetheless argued that the District does

not maintain images of these checks. The Custodian argued that even if it did possess the responsive records, they do not classify as “payroll records” under OPRA. Jackson, GRC 2002-98. The Custodian noted that contrary to the Complainant’s OPRA request statement, the District administers its payroll “in-house” and does not contract with ADP or any other payroll service.

The Custodian finally argued that regarding OPRA request item No. 4, which the District interprets as “Payroll Register [is] Missing Summer Paychecks Proof and Dates Paid”, the Plan arguments above apply. The Custodian nonetheless reiterated that the payroll registers do not include Plan payments because they are not additional to an employee’s “gross pay”. The Custodian contended that this fact is not apparent to the Complainant that Ms. Harle deferred receipt of some pay because of the properly redacted information.

Additional Submissions:

On June 16, 2022, the Complainant submitted a rebuttal to the SOI.⁶ 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.⁷ 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 June 21, 2022, the Complainant supplemented his rebuttal with an additional submission. Therein, the Complainant again argued that the District intentionally withheld records and provided false information to the GRC under penalty of perjury.⁸ The Complainant argued that the actions of Ms. Harle and the District’s failure to comply with this OPRA request resulted in significant financial harm.

The Complainant contended that when he sought Ms. Harle’s payroll register from the District, he specifically asked for any “live checks” and “summer pay” to be included therein. The Complainant argued that although he has direct evidence that Ms. Harle received a check in August 2016, the District intentionally omitted same from the disclosed registers.⁹ The Complainant further contended that any “summer pay” is a “payroll record” subject to disclosure under N.J.S.A. 47:1A-10 and that the Custodian continued to deny access even after being informed of the forgoing point. The Complainant continued to assert that documents possessed by him or obtained through other means prove that Ms. Harle received summer payments from ADP and that they still

⁶ A portion of this rebuttal, and Counsel’s July 11, 2022 response, discussed issues raised in Harle v. New Milford Bd. of Educ. (Bergen), GRC Complaint No. 2022-161 (concurrently being adjudicated with this complaint). The GRC notes that due to the complexity of each complaint, the GRC has chosen not to consolidate them.

⁷ 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 to return the SOI as incomplete.

⁸ The Complainant requested that the GRC refer this complaint to “the United State Attorney’s Office in White Plains, NY, the Bergen County Prosecutor’s Office, the New Milford Police Department, and the Rockland County District Attorney’s Office” to prosecute the District.

⁹ The Complainant asserted that multiple District custodians have intentionally withheld “summer pay” information from him since 2016 and requested that they be “fined or prosecuted” by the GRC. However, the GRC notes that it can only address this complaint directly and does not have the authority to review any OPRA request that is not the subject of this individual complaint. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e).

maintained copies thereof “that [she] converted to ‘live checks’ . . .” The Complainant requested that the GRC subpoena ADP for that information to “see who is telling the truth.”

The Complainant further argued that the GRC should determine who produced the payroll registers through metadata to determine who altered them.

On July 11, 2022, Custodian’s Counsel submitted a letter brief arguing that the Complainant’s rebuttals contain 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” exception. Jackson, GRC 2022-98; O’Shea, GRC 2008-283. Counsel argued that whether the Complainant previously obtained 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. Counsel asserted that this is especially true of the Forms, which obviously contain personal financial deduction information about a voluntary annuity program.

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 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 four (4) OPRA request items.¹⁰ However, as in Burns, GRC 2013-64, the Complainant never requested such records in the April 12, 2022 OPRA request he identified as at issue here. In fact, the Complainant sought “live checks” deposited by Ms. Harle to include all deposit information and Ms. Harles submitted deduction forms. None of the items the Complainant identified in this complaint are encompassed in said OPRA request. The GRC is therefore satisfied that this complaint is without merit because no denial of access occurred.

¹⁰ The GRC notes that the disputed OPRA request item No. 4 appears to be more of a statement about information the Complainant considered “[m]issing” from the payroll registers he previously received. Such a statement would not be considered an OPRA request because the Complainant does not appear to be requesting a specific record, but instead stating his disagreement over the content of a record. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).

Accordingly, because the Custodian did not deny access to the records the Complainant asserted were at issue in this complaint because he did not request them, this 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 because the Custodian did not deny access to the records the Complainant asserted were at issue in this complaint because he did not request them, this 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