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

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

Danielle Ryan
Complainant

Complaint No. 2023-17

v.

Mahwah Board of Education (Bergen)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 2025 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 may have unlawfully denied access to correspondence responsive to the Complainant’s OPRA request. See N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2018-112 (Interim Order dated February 26, 2020). Specifically, the evidence of record indicates that at least some e-mails responsive to the subject OPRA request may exist. Thus, the Custodian must conduct a new search for responsive records and either 1) disclose to the Complainant those located, 2) provide the Complainant a lawful basis for any records located that the Custodian believes are exempt from disclosure; and/or 3) certify to the Complainant if no additional responsive records existed. The GRC notes that the Custodian is not required to disclose e-mail chain attached to the Denial of Access Complaint because the Complainant already possessed them at the time of her OPRA request. See Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008).
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 25th Day of March 2025

John A. Alexy, 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 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

**Danielle Ryan¹
Complainant**

GRC Complaint No. 2023-17

v.

**Mahwah Board of Education (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of correspondence between the Mahwah Board of Education (“MBOE”) members, Administrative Team (Superintendent, Assistant Superintendent, Business Administrator), and two (2) specific individuals regarding “diversity, equity, and inclusion” between January 2021 and August 2021.³

Custodian of Record: Kyle J. Bleeker

Request Received by Custodian: November 9, 2022

Response Made by Custodian: November 16, 2022

GRC Complaint Received: January 26, 2023

Background⁴

Request and Response:

On October 20, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On November 8, 2022, at 6:58 p.m., the Complainant e-mailed the Custodian seeking a status update on her OPRA request. On November 9, 2022, the Custodian responded stating that he would have to “investigate” what happened to the Complainant’s original e-mail.

On November 16, 2022, the sixth (6th) business days after receipt of the OPRA request, the Custodian responded in writing stating that he received same in the Business Office on November 8, 2022. The Custodian stated that he was working with Information Technology (“IT”) to “determine why the initial OPRA submission . . . was not responded to sooner.” The Custodian

¹ legal representation listed on record.

² Represented by Marc H. Zitomer, Esq., of Schenck, Price, Smith & King, LLP (Florham Park, NJ).

³ The Complainant submitted two (2) additional OPRA requests on the same day 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.

also stated that he needed additional time to respond to the subject OPRA request.⁵ On December 2, 2022, the Custodian e-mailed the Complainant stating that IT gave him e-mails to review for disclosability and that he expected to respond again “early next week.”

On December 6, 2022, the Custodian responded in writing stating that the MBOE continued to investigate why the Complainant’s OPRA request was “not replied to when originally submitted.” The Custodian further stated that he was denying the subject OPRA request because a search resulted in a finding that no correspondence existed.

Denial of Access Complaint:

On January 26, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that after the Custodian did not respond to the subject OPRA request, she contacted the Custodian on November 8, 2022. The Complainant asserted that on November 9, 2022, the Custodian responded stating that he would “investigate” why her OPRA request was not addressed.

The Complainant argued that on November 16, 2022, the Custodian responded to the subject OPRA request stating that no responsive records existed. The Complainant contended that this response conflicted with MBOE’s prior response to a May 10, 2022 OPRA request for similar correspondence between April 2021 and August 2021. The Complainant attached an e-mail chain disclosed in response thereto in support of her argument.

Statement of Information:

On March 27, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 9, 2022. The Custodian maintained that he was not sure why he did not receive the Complainant’s October 20, 2022 e-mail. The Custodian certified that he conducted a search through MBOE’s e-mail archives and contacted the individuals identified in the OPRA request. The Custodian certified that after a brief extension, he responded in writing on December 6, 2022 denying the OPRA request on the basis that no records existed.

The Custodian contended that no unlawful denial of access occurred here because, per Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008), the Complainant already possessed the only records responsive to the subject OPRA request that existed. The Custodian further argued that, like in Bart, the Complainant attached to the Denial of Access Complaint the record responsive to the subject OPRA request that MBOE previously disclosed to her. The Custodian contended that this complaint is also similar to Del Campo v. N.J. Dep’t of Law & Pub. Safety, Div. on Civil Rights, GRC Complaint No. 2021-254 (February 2022), where the Council held that the custodian did not unlawfully deny access to a letter because the complainant had it in his possession. The Custodian also cited to Anonymous v. Borough of Haledon (Passaic), GRC

⁵ The Custodian’s failure to provide a date certain on which he would respond is a violation of N.J.S.A. 47:1A-5(i)(1); however, the GRC will not address this issue because the Complainant did not raise it in the Denial of Access Complaint.

Complaint No. 2020-93 (June 2021) as dispositive here. The Custodian further contended that his actions were not knowing and willful in nature.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Additionally, the Appellate Division has held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. Bart, 403 N.J. Super. 609. The Appellate Division noted that “requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not . . . advance the purpose of OPRA, which is to ensure an informed citizenry.” Id. at 618 (citations omitted). The Appellate Division’s decision in Bart, however, turns upon the specific facts of that case. The court stated it was “undisputed that Bart at all times had within his possession a copy of [the requested record] Indeed, he attached a copy to the complaint he filed with the Council.” Id. Similarly, the Council has held that when a complainant admits that they were in possession of the requested record at the time he made the request, it is not a denial of access if the custodian failed to provide another copy. Rodriguez v. Kean Univ., GRC Complaint No. 2014-121 (October 2014). See also Owoh (on behalf of O.R.) v. West-Windsor Reg’l Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (February 2013).

However, in Rodriguez v. Kean Univ., GRC Complaint No. 2018-112 (Interim Order dated February 26, 2020), the custodian initially denied access to the subject OPRA request on the basis that no records existed. In the SOI, the Custodian again certified that no records existed. Following the SOI, the complainant sent to the GRC screen shots of at least some responsive records he obtained from a prior OPRA request to refute the custodian’s arguments. Based on this, the Council held that, unlike in Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), an unlawful denial of access may have occurred. The Council thus ordered the custodian to conduct a new search for responsive records. The Council also noted that the custodian was not required to disclose those records already in the complainant’s possession. Id. at 7 (citing Bart, 403 N.J. Super. at 618).

The facts here are on point with those in Rodriguez, GRC 2018-112. Specifically, the Custodian denied the OPRA request on the basis that no records exist. However, the Complainant included evidence in the Denial of Access Complaint that at least one (1) responsive e-mail chain existed. That e-mail chain includes e-mails spanning March 24, 2021 through May 4, 2021

regarding a Teams® meeting rescheduled from March 25, 2021, to April 29, 2021. While the chain certainly fell within the shared time frame of both the May 10, 2022 (from April 2021 through August 2021) and subject OPRA request (from January 2021 through August 2021), the March 24, 2021 e-mail predates the time frame identified in former, but falls directly within the time frame identified in the latter. Thus, this e-mail chain provides evidence to suggest that additional e-mails or e-mail chains connected to the originally scheduled March 25, 2021 Teams® meeting may exist and, if so, should have been disclosed.

Accordingly, the Custodian may have unlawfully denied access to correspondence responsive to the Complainant's OPRA request. See N.J.S.A. 47:1A-6; Rodriguez, GRC 2018-112. Specifically, the evidence of record indicates that at least some e-mails responsive to the subject OPRA request may exist. Thus, the Custodian must conduct a new search for responsive records and either 1) disclose to the Complainant those located, 2) provide the Complainant a lawful basis for any records located that the Custodian believes are exempt from disclosure; and/or 3) certify to the Complainant if no additional responsive records existed. The GRC notes that the Custodian is not required to disclose e-mail chain attached to the Denial of Access Complaint because the Complainant already possessed them at the time of her OPRA request. See Bart, 403 N.J. Super. at 618.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian may have unlawfully denied access to correspondence responsive to the Complainant's OPRA request. See N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2018-112 (Interim Order dated February 26, 2020). Specifically, the evidence of record indicates that at least some e-mails responsive to the subject OPRA request may exist. Thus, the Custodian must conduct a new search for responsive records and either 1) disclose to the Complainant those located, 2) provide the Complainant a lawful basis for any records located that the Custodian believes are exempt from disclosure; and/or 3) certify to the Complainant if no additional responsive records existed. The GRC notes that the Custodian is not required to disclose e-mail chain attached to the Denial of Access Complaint because the Complainant already possessed them at the time of her OPRA request. See Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008).
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

Prepared By: Frank F. Caruso
Executive Director

March 18, 2025