

FINAL DECISION

November 15, 2006 Government Records Council Meeting

Phillip J. Donohue
Complainant

Complaint No. 2006-164

v.

Salem County Vocation Technical High School
Custodian of Record

At the November 15, 2006 public meeting, the Government Records Council (“Council”) considered the November 8, 2006 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 as the Custodian certifies that no records responsive to the Complainant’s request exist, there would not have been an unlawful denial of access. However, the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his May 4, 2006 request within the statutorily mandated seven (7) business days, therefore creating a “deemed” denial.

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 15th Day of November, 2006

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.



Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

Decision Distribution Date: November 21, 2006

**Findings and Recommendations of the Executive Director
November 16, 2006 Council Meeting**

Phillip J. Donohue¹

GRC Complaint No. 2006-164

Complainant

v.

**Salem County Vocation Technical High School²
Custodian of Records**

Records Relevant to Complaint:

Records documenting Superintendent William Adams salary for the 2006-2007 school year, the cost of providing a car to the Superintendent, additional compensation to be paid to the Superintendent, and any compensation from the Grants Administration to the Superintendent.

Request Made: May 4, 2006

Response Made: May 16, 2006

Custodian: William Gerson

GRC Complaint Filed: September 1, 2006

Background

May 4, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests records regarding Superintendent William Adams including his salary for the 2006-2007 school year, the cost of providing a car to the Superintendent, additional compensation to the Superintendent, and any compensation from the Grants Administration to the Superintendent.

May 16, 2006

¹ No legal representation listed.

² Represented by Joseph Bently, Esq. of Capehart Scatchard located in Mt. Laurel, NJ

Custodian's response to the OPRA request. The Custodian responds to the Complainant's OPRA request eight (8) business days after request with an invoice for the cost of the documents requested totaling \$40.09.

May 23, 2006

Letter from Custodian to Complainant. The Custodian also informs the Complainant that the Superintendent's salary for the 2006-2007 school year was not yet determined. The Custodian also responded that no records exist that fulfill the requests for documents showing the cost of providing a car or additional compensation to the Superintendent.

August 22, 2006

Denial of Access Complaint filed with the Government Records Council ("GRC"). The Complainant states that in response to his request for the salary of Superintendent Adams for the 2006-2007 school year he was informed that the salary was not yet determined. The Complainant also states that his requests for records concerning the cost of providing a car to the Superintendent, additional compensation to the Superintendent and any compensation from the Grants Administration to the Superintendent were denied because no records responsive exist.

The Complainant states that he is requesting these records so that he may get an accurate account of the Superintendent's total annual salary.

September 13, 2006

Offer of Mediation sent to both parties.

September 18, 2006

Custodian's signed Agreement to Mediate. The Complainant did not agree to mediate this complaint.

September 21, 2006

Request for Statement of Information sent to the Custodian.

October 3, 2006

No Defense letter sent to Custodian from GRC. This letter grants the Custodian an additional three (3) business days to submit a Statement of Information to the GRC. The Custodian did not respond to the GRC's initial Statement of Information request within the seven (7) business days that the Custodian was given. If, after three (3) business days, the GRC does not receive the Statement of Information the complaint will be adjudicated with only the information that has been submitted thus far.

October 4, 2006

Custodian's Statement of Information ("SOI") with the following attachments:

- May 4, 2006 Complainant's OPRA request,
- May 16, 2006 Custodian's response to the OPRA request, and
- May 23, 2006 Letter from Custodian to Complainant with requested records.

The Custodian asserts that the Complainant was provided with all available records pursuant to the Complainant's OPRA request. The Custodian states that on May 4, 2006, the Complainant requested records regarding the Superintendent's 2006-2007 salary, the cost of providing a car to the Superintendent, and any additional compensation that would be paid to the Superintendent and that these records do not exist. The Custodian also asserts that although listed on Complainant's Denial of Access Complaint, the Complainant never requested records pertaining to compensation from the Grants Administration on his May 4, 2006 OPRA request.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions...” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file ... or that has been received in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also states that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant states that in response to his request for the salary of Superintendent Adams for the 2006-2007 school year, he was informed that the salary was not yet determined. The Complainant also states that his requests for records concerning the cost of providing a car to the Superintendent, additional compensation to the Superintendent, and any compensation from the Grants Administration to the Superintendent were denied because no records responsive to this request exist. Furthermore, the Complainant filed his OPRA request on May 4, 2006, and the Custodian did not reply to the Complainant's request until May 16, 2006, eight (8) business days after the request was filed.

The Custodian asserts that the Complainant was provided with all available records pursuant to the Complainant's OPRA request. The Custodian states that on May 4, 2006, the Complainant requested records regarding the Superintendent's 2006-2007 salary, the cost of providing a car to the Superintendent, and any additional compensation that would be paid to the Superintendent. On May 16, 2006, the Custodian informed the Complainant, pursuant to N.J.S.A. 47:1A-6, that there are no records responsive to the Complainant's requests. The Custodian also asserts that although listed on Complainant's Denial of Access Complaint form, the Complainant never requested records pertaining to compensation from the Grants Administration on his May 4, 2006 OPRA request.

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. 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 this case, the Custodian did not grant or deny access to the requested records within the statutorily mandated seven (7) business days from receipt of said request. As indicated in N.J.S.A. 47:1-A.5.i, a custodian's failure to respond within the required seven (7) business days is a “deemed” denial. In Russomano v. Township of Edison, GRC Case No. 2002-86 (July 2003), the Council held that “[w]hile it is true that the OPRA request sought only information and not specific records, the custodian was still obligated to respond to the request in seven business days, either rejecting the request as defective under OPRA or advising the requestor of the specific date by which a response would be provided.” The same applies here, as the Custodian was not able to fulfill the Complainant's request because no records responsive exist. However, the Custodian is still obligated under the provisions of OPRA to provide a written response to the request within the statutorily mandated seven (7) business days granting or denying access

Therefore, as the Custodian certifies that no records responsive to the Complainant's request exist, there would not have been an unlawful denial of access. However the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his May 4, 2006 OPRA request within the statutorily mandated seven (7) business days therefore creating a "deemed" denial.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that as the Custodian certifies that no records responsive to the Complainant's request exist, there would not have been an unlawful denial of access. However, the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his May 4, 2006 request within the statutorily mandated seven (7) business days, therefore creating a "deemed" denial.

Prepared By:

Rebecca Steese
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

November 8, 2006