



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Acting Commissioner

**FINAL DECISION**

**April 25, 2012 Government Records Council Meeting**

Daniel W. Conard  
Complainant

Complaint No. 2010-318

v.

Runnemede Board of Education (Camden)  
Custodian of Record

At the April 25, 2012 public meeting, the Government Records Council (“Council”) considered the April 18, 2012 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 certified in the Statement of Information that the only record responsive that exists is the settlement agreement between Ms. Brazelton and the Board and the Custodian certified that there are no other records responsive that exist besides said settlement agreement and because there is no evidence in the record to refute the Custodian’s certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

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 25<sup>th</sup> Day of April, 2012

Robin Berg Tabakin, Chair  
Government Records Council



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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: April 30, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 25, 2012 Council Meeting**

**Daniel W. Conard<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-318**

v.

**Runnemede Board of Education (Camden)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of all documents involving School Board Attorney, Mr. Philip Stern (“Mr. Stern”), and former Business Administrator, Ms. Kelly Brazelton’s (“Ms. Brazelton”), attorney, Mr. Joseph Betley (“Mr. Betley”), regarding the reason why Ms. Brazelton is on paid leave and receiving a total compensation of \$74,594.25 until April 2011.

**Request Made:** November 8, 2010

**Response Made:** November 11, 2010

**Custodian:** Nancy Ward<sup>3</sup>

**GRC Complaint Filed:** December 1, 2010<sup>4</sup>

**Background**

**November 8, 2010**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**November 11, 2010**

Custodian’s response to the OPRA request. The Custodian responds in writing on the Complainant’s OPRA request form on the third (3<sup>rd</sup>) business day following receipt of such request. The Custodian states that access to the requested record is denied because such records are considered attorney-client privileged material pursuant to N.J.S.A. 47:1A-1.1. The Custodian provides a copy of a settlement agreement between Ms. Brazelton and the Runnemede Board of Education (“Board”).

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

<sup>2</sup> Represented by Philip E. Stern, Esq., of Adams, Stern, Gutierrez & Lattiboudere, LLC (Newark, NJ).

<sup>3</sup> Business Administrator Ms. Kelly Brazelton (“Ms. Brazelton”) was on paid leave at the time of the Complainant’s OPRA request. During the adjudication of this Denial of Access Complaint, two (2) people have assumed the role of Custodian. Superintendent, Dr. Nancy Ward (“Dr. Ward”) responded to the OPRA request herein and is the current Custodian to date. Furthermore, the Custodian at the time the Statement of Information was submitted was Interim School Business Administrator, Ms. Valerie Carmody (“Ms. Carmody”). When referring to Custodian herein, the Custodian is either Dr. Ward or Ms. Carmody.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

**December 1, 2010**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated November 8, 2010
- Custodian’s response to the Complainant’s OPRA request dated November 11, 2010.<sup>5</sup>

The Complainant states that Ms. Brazelton has been on paid leave since August 2010. The Complainant also states that Ms. Brazelton will receive a salary of \$74,594.25 until April 2011. The Complainant further states that the Custodian stated that the reason why Ms. Brazelton is on paid leave and receiving a salary of \$74,594.25 is between the two (2) attorneys.<sup>6</sup>

The Complainant does not agree to mediate this complaint.

**December 2, 2010**

Request for the Statement of Information (“SOI”) sent to Ms. Lori Laundra, (“Ms. Laundra”), Business Administration Office. The GRC states that the Custodian listed on the contact sheet is out on paid leave. The GRC also states that pursuant to the telephone conversation this morning, Ms. Laundra informed the GRC that it should send the request for the SOI to Ms. Laundra to forward to the appropriate Custodian.

**December 13, 2010**

Letter from GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for an SOI on December 2, 2010 and to date has not received a response. Further, the GRC states that if the SOI is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

**December 15, 2010**

E-mail from Custodian’s Counsel to the GRC. Counsel requests an extension of time to complete the SOI until December 17, 2010.

**December 16, 2010**

E-mail from the GRC to Custodian’s Counsel. The GRC grants the Counsel’s request for an extension until December 17, 2010.

**December 16, 2010**

Custodian’s incomplete SOI with no attachments.

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<sup>5</sup> The Custodian’s response to the OPRA request herein was on the Complainant’s OPRA request form. However, the Custodian failed to date the response. The Custodian certified in the SOI that she responded to the OPRA request on or about November 11, 2010.

<sup>6</sup> It appears that the Complainant is referring to Mr. Stern and Mr. Betley.

The Custodian certifies that a settlement agreement between Ms. Brazelton and the Board exists which is responsive to the Complainant's OPRA request. The Custodian also certifies that this settlement agreement was provided to the Complainant on November 11, 2010. The Custodian further certifies that the Board must permanently retain settlement agreements in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.<sup>7</sup>

The Custodian certifies that the only record that exists is the settlement agreement between Ms. Brazelton and the Board. The Custodian argues that any other records that might exist are exempt from disclosure as attorney-client privileged material pursuant to N.J.S.A. 47:1A-1.1.

**December 16, 2010**

E-mail from the GRC to the Custodian. The GRC states that Items No. 6, No. 8, No. 10 and No. 12 are missing from the SOI. The GRC inquires if these items are going to be sent under a separate cover through the mail.

**December 16, 2010**

E-mail from Custodian's Counsel to the GRC. Counsel states that he will send the missing items to the GRC under separate cover.

**January 4, 2011**

E-mail from the GRC to the Custodian. The GRC states that the SOI is incomplete and is being returned to the Custodian for completion. The GRC states that the Custodian must submit missing Items No. 6, No. 8, No. 10 and No. 12 by January 7, 2011.

**January 5, 2011**

E-mail from the Custodian to the GRC. The Custodian states that at the time of the Complainant's OPRA request, Ms. Carmody, was at the Board office two (2) days per week. The Custodian also states that she responded to the Complainant's OPRA request after consulting with Custodian's Counsel. The Custodian attaches Items No. 6 and No. 8.

**March 9, 2012**

E-mail from the GRC to the Custodian. The GRC requests a legal certification from the Custodian certifying whether any other records responsive to the Complainant's OPRA request exist besides the settlement agreement that was previously provided to the Complainant.

**March 12, 2012**

E-mail from the Custodian to the GRC. The Custodian attaches the requested legal certification. The Custodian certifies that no other records exist which are responsive to the Complainant's OPRA request.

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<sup>7</sup> The Custodian did not certify to the search undertaken to locate the records responsive. Daniel W. Conard v. Runnemede Board of Education (Camden), 2010-318 – Findings and Recommendations of the Executive Director

## Analysis

**Besides the previously provided settlement agreement, are there other records responsive to the Complainant's OPRA request?**

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 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.

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 Custodian provided the Complainant a copy of a settlement agreement between Ms. Brazelton and the Board, in response to the Complainant's OPRA request. The Custodian stated that any other records that might exist are exempt from disclosure as attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1. The Custodian certified in the SOI that the only record that exists is the settlement agreement between Ms. Brazelton and the Board which was previously provided to the Complainant. The Custodian also certified that to the extent that other records might exist, such records are exempt from disclosure as attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1. Upon a request for an additional certification, the Custodian certified that there are no other records responsive to the Complainant's OPRA request besides the previously provided settlement agreement between Ms. Brazelton and the Board.

In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call

made to him from the New Jersey Department of Education. The custodian responded stating that there was no record of any telephone calls made to the complainant. The custodian subsequently certified that no records responsive to the complainant's request existed. The complainant failed to submit any evidence to refute the custodian's certification. The GRC held that the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed.

In the matter before the Council, the Custodian certified in the SOI that the settlement agreement between Ms. Brazelton and the Board is the only record responsive that exists. Furthermore, the Custodian certified that there are no other records responsive that exist besides the settlement agreement between Ms. Brazelton and the Board. Additionally, there is no evidence in the record to refute the Custodian's certification.

Therefore, because the Custodian certified in the Statement of Information that the only record responsive that exists is the settlement agreement between Ms. Brazelton and the Board and the Custodian certified that there are no other records responsive that exist besides said settlement agreement and because there is no evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

Although the Council held that no records responsive to the Complainant's OPRA request exist, the Complainant's request also appears to be broad and unclear and would require the Custodian to conduct research. However, Council declines to address this issue because the Custodian has certified that there are no records responsive to the Complainant's request. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Custodian certified in the Statement of Information that the only record responsive that exists is the settlement agreement between Ms. Brazelton and the Board and the Custodian certified that there are no other records responsive that exist besides said settlement agreement and because there is no evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

Prepared By: Harlynn A. Lack, Esq.  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

April 18, 2012