



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 26, 2012 Government Records Council Meeting

Debbie Schooley-Wank
Complainant

Complaint No. 2011-175

v.

Teaneck Community Charter School (Bergen)
Custodian of Record

At the June 26, 2012 public meeting, the Government Records Council ("Council") considered the June 19, 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 has certified that no records responsive to the Complainant's OPRA request exist and because there is no evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6. See also, Paff v. Township of Blairstown (Warren), GRC Complaint No. 2009-53 (February 2010).

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 26th Day of June, 2012

Steven F. Ritardi, Esq., Acting 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: June 28, 2012



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 26, 2012 Council Meeting**

**Debbie Schooley-Wank¹
Complainant**

GRC Complaint No. 2011-175

v.

**Teaneck Community Charter School (Bergen)²
Custodian of Records**

Records Relevant to Complaint:

Copies of every e-mail in former Teaneck Community Charter School director Dr. Shaw's e-mail account from the time he retired until March 30, 2011.³

Request Made: March 30, 2011

Response Made: April 6, 2011

Custodian: Joseph V. Sordillo

GRC Complaint Filed: May 17, 2011⁴

Background

March 30, 2011

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in an e-mail referencing OPRA. The Complainant indicates that she does not dispute the e-mails being put onto a disc if necessary.

April 6, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request.⁵ The Custodian states that he needs further clarification in order to fulfill the Complainant's request for e-mails. The Custodian states that Dr. Shaw was not a Board member, official, or employee of the Teaneck Community Charter School ("TCCS") after July 31, 2010 so any e-mail correspondence since then cannot be provided.

¹ No legal representation listed on record.

² Represented by Joseph V. Sordillo of McElroy, Deitsch, Mulvaney & Carpenter, LLP (Morristown, NJ).

³ Additional records not relevant to the adjudication of this complaint were also requested.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ The Custodian certifies in the Statement of Information that he received the Complainant's OPRA request on March 31, 2011.

April 7, 2011

E-mail from the Complainant to the Custodian. The Complainant asserts that the date range for the e-mails she seeks is from July 1, 2010 to April 7, 2011. The Complainant further states that the sender can be Dr. Rex Shaw, any TCCS Board Trustee, any TCCS Administrator or staff, any Teaneck town official, any Bergen County official, any New Jersey State official (including but not limited to Senator Loretta Weinberg), any United States federal government representative, any friends of TCCS representatives (board members, etc.), Joan Wright, and/or any other consultants or professionals who have been paid by TCCS.

The Complainant requests that the Custodian load the e-mails onto a computer disc. The Complainant states that although Dr. Shaw has not been a board member, administrator, or employee of TCCS since July 31, 2010, he has been provided with an office, phone extension, and e-mail account that are public property and is therefore subject to OPRA.

April 19, 2011

E-mail from the Custodian to the Complainant. The Custodian states that he received the Complainant's April 7, 2011 e-mail on April 8, 2011. The Custodian states there are no e-mails within his agency's possession that correspond with the parameters the Complainant expressed on April 7, 2011.

April 20, 2011

E-mail from the Complainant to the Custodian. The Complainant states that she would like the Custodian to reconsider the response to her request or she will take legal action.

April 21, 2011

E-mail from the Custodian to the Complainant. The Custodian states that the Complainant's threats to take legal action are unwarranted and informs the Complainant that the school was on spring break from April 11, 2011 through April 15, 2011.

May 17, 2011

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

- Complainant's OPRA request dated March 30, 2011
- E-mail from the Custodian to the Complainant dated April 6, 2011
- E-mail from the Complainant to the Custodian dated April 7, 2011
- E-mail from the Custodian to the Complainant dated April 19, 2011
- E-mail from the Complainant to the Custodian dated April 20, 2011
- E-mail from the Custodian to the Complainant dated April 21, 2011⁶

The Complainant states that she believes that the requested e-mails do exist and that if they did not, there would be no point in the Custodian requesting that she narrow

⁶ The Complainant attached additional information that is not relevant to the adjudication of this complaint. Debbie Schooley-Wank v. Teaneck Community Charter School (Bergen), 2011-175 – Findings and Recommendations of the Executive Director 2

and clarify her request. The Complainant asserts that she has filed her complaint to retrieve e-mails that should not have been purged.

The Complainant does not agree to mediate this complaint.

June 6, 2011

Request for the Statement of Information (“SOI”) sent to the Custodian.

June 14, 2011

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated March 30, 2011
- E-mail from the Custodian to the Complainant dated April 6, 2011
- E-mail from the Complainant to the Custodian dated April 7, 2011
- E-mail from the Custodian to the Complainant dated April 19, 2011
- E-mail from the Complainant to the Custodian dated April 20, 2011
- E-mail from the Custodian to the Complainant dated April 21, 2011⁷

The Custodian certifies that although e-mails have a three (3) year retention requirement, TCCS has no e-mails that are responsive to the Complainant’s request and accordingly, none have been destroyed. The Custodian further certifies that although the Complainant later clarified her originally overbroad request for e-mails, there are no e-mails that correspond to the Complainant’s request. The Custodian contends that there has been no unlawful denial of access.

Analysis

Whether the Custodian unlawfully denied the Complainant 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.

⁷ The Custodian submits a letter dated May 27, 2011 as his response to Item 12 of the SOI.
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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.

In the instant complaint, the Complainant contends that the Custodian’s contention that there are no e-mails responsive to the Complainant’s request is erroneous because Dr. Shaw was a public employee and the computer he used was public property. However, the Custodian certified in the Statement of Information that no records exist that are responsive to the Complainant’s request. The Complainant has failed to submit competent, credible evidence to refute the Custodian’s certification in this regard.

It is well settled that in the absence of any credible evidence to the contrary, a custodian’s certification that a reasonable search failed to produce requested records prevails. Accordingly, in Paff v. Township of Blairstown (Warren), GRC Complaint No. 2009-53 (February 2010), the GRC held that the Custodian’s certification that a fruitless search involving the assistance of police officials, a risk management consultant, and the township attorney qualified as sufficient evidence to prove that the requested records were not in the township’s possession at the time of the complainant’s request.

In addition, the Council has consistently held that no denial of access occurs when a custodian has demonstrated that no records responsive to a complainant’s request exist. 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 and the complainant submitted no evidence to refute said certification. The GRC held the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed.

Therefore, because the Custodian has certified that no records responsive to the Complainant’s OPRA request exist and because there is no evidence in the record to refute the Custodian’s certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6. *See also*, Paff v. Township of Blairstown (Warren), GRC Complaint No. 2009-53 (February 2010).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian has certified that no records responsive to the Complainant's OPRA request exist and because there is no evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the requested records. N.J.S.A. 47:1A-6. *See also*, Paff v. Township of Blairstown (Warren), GRC Complaint No. 2009-53 (February 2010).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

June 19, 2012