



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

April 30, 2013 Government Records Council Meeting

Claudia Vargas
(On behalf of The Philadelphia Inquirer)
Complainant

Complaint No. 2011-315

v.
Camden City School District (Camden)
Custodian of Record

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the April 23, 2013 Supplemental 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. Although Custodian’s Counsel, on behalf of the School District, provided the records responsive to the Complainant without redactions and within the extended period of time to do so, the Custodian failed to comply with the Council’s January 29, 2013 Interim Order because he failed to provide a certified confirmation of compliance to the Executive Director within the required time frame, in accordance with N.J. Court Rule 1:4-4. Thus, the Custodian failed to fully comply with the Council’s January 29, 2013 Interim Order.
2. The former Custodian violated N.J.S.A. 47:1A-6 by failing to provide a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10. The current Custodian also failed to comply with the Council’s January 29, 2013 Interim Order by failing to provide a simultaneous certified confirmation of compliance. However, the Custodian did timely provide the records responsive to the Complainant’s request. Therefore, it is concluded that the former and current Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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, 2013

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, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 30, 2013 Council Meeting**

Claudia Vargas
(on behalf of the Philadelphia Inquirer)¹
Complainant

GRC Complaint No. 2011-315

v.

Camden City School District (Camden)²
Custodian of Records

Records Relevant to Complaint: Total number of absences, including sick days, personal days, and vacation days for each school year former Superintendent Dr. Bessie LaFrae Young (“Dr. Young”) served as Superintendent.³

Request Made: September 12, 2011

Response Made: September 20, 2011

GRC Complaint Filed: October 4, 2011⁴

Background

January 29, 2013 Council Meeting:

On January 29, 2013, the Council considered the January 22, 2013 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, found that:

1. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not carried her burden of proving a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10 and Burdick v. Franklin Township Board of Education(Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). *See also* Weimer v. Township of Middletown (Monmouth), GRC Complaint No. 2004-55 (August 2005). As such, the Custodian must release Dr. Young’s attendance records for the years she served as Superintendent with

¹ No legal representation listed on record.

² John C. Oberg, Custodian of Records. Represented by Bryant Lawrence Horsley, Jr., Esq., of Florio, Perrucci, Steinhardt & Fader, LLC (Cherry Hill, NJ). The Custodian at the time of the Denial of Access Complaint and Statement of Information was Celeste Ricketts.

³ The Complainant requests additional documentation not relevant to the adjudication of this complaint.

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

appropriate redactions as necessary. The Custodian must also provide a redaction index detailing the information redacted and the lawful basis of the redactions.

2. **The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director.⁶**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order and Response:

The Council distributed its Interim Order to all parties on January 30, 2013. On February 13, 2013, Custodian's Counsel requested an extension until February 21, 2013, to comply with the Council's Interim Order.⁷ The GRC sent out its meeting notification to all parties on March 19, 2013. After receipt of the meeting notification, Custodian's Counsel telephoned the GRC on March 21, 2013, seven (7) business hours prior to the March 22, 2013 Council meeting. Counsel stated that he was unaware that a certified confirmation of compliance had to be submitted in order to comply with the Council's January 29, 2013 Order and requested to submit said certification.

Custodian's Counsel responded to the Council's Interim Order on March 21, 2013, the twentieth (20th) business day from the last day of the extended period of time to do so and provided the GRC with the Custodian's certified confirmation of compliance. The Custodian certified that in accordance with the Council's January 29, 2013 Order the Camden City School District, ("School District"), forwarded the records responsive without redactions to the Complainant on February 21, 2013, within the requested period of time.⁸ The Custodian also certifies that Counsel verbally confirmed with the Complainant on March 21, 2013, that she received the requested records.

Analysis

Compliance

⁵ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁶ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

⁷ Lester Taylor, III, Esq. of Florio, Perrucci, Steinhardt & Fader, LLC requested an extension of time to comply with the Council's Order. Mr. Taylor was also the Custodian at the time of the OPRA request, Denial of Access Complaint and Statement of Information.

⁸ The Custodian includes copies of the e-mail and letter from Counsel to the Complainant dated February 21, 2013.

Every decision wherein disclosure is ordered clearly states, “**The Custodian shall comply with [release of government records]...within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions as necessary, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁹ to the Executive Director.**” (Emphasis added).

At its January 29, 2013 meeting, the Council ordered the Custodian to provide the Complainant with Dr. Young’s attendance records for the years she served as Superintendent with appropriate redactions as necessary. On January 30, 2013, the Council disseminated its Order. Thus, the Custodian’s response was due by close of business on February 6, 2013. However, on February 13, 2013, the tenth (10th) business day following receipt of the Council’s Order, Custodian’s Counsel requested an extension until February 21, 2013, to comply with the Council’s Interim Order. After receipt of the GRC’s meeting notification on March 19, 2013 Counsel telephoned the GRC on March 21, 2013, the day before the Council’s March 22, 2013 meeting, and stated that the Custodian provided the records responsive to the Complainant on February 21, 2013. Further, on March 21, 2013, Counsel provided the GRC with a certified confirmation of compliance. Although Counsel previously requested an extension until February 21, 2013 to comply with the Council’s Order and provided those records responsive to the Complainant on February 21, 2013, the Custodian still failed to respond to the Council’s Interim Order because Counsel did not inform the GRC until March 21, 2013 that the Custodian had complied with the Council’s Order.

The Council notes that this complaint was originally scheduled for the March 22, 2013 meeting. The Council also notes that cases involving a custodian’s failure to comply with a Council’s Interim Order are usually transferred to the Office of Administrative Law (“OAL”) for a fact finding hearing to determine whether the custodian knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances. However, because the Custodian’s Counsel chose to submit the required certified confirmation of compliance with the Council’s Interim Order on the eve of the Council’s March 21, 2013 meeting, the Council was required to withhold decision in this matter until the April 30, 2013 meeting, in order to avoid wasting administrative resources.

Thus, although the Custodian’s Counsel provided the Complainant with the records responsive to the request within the extended period of time, the GRC had no way of knowing if the School District complied with the Council’s January 29, 2013 Interim Order in the absence of simultaneous certified confirmation of compliance filed by the Custodian.¹⁰

Therefore, although Custodian’s Counsel, on behalf of the School District, provided the records responsive to the Complainant without redactions and within the extended period of time to do so, the Custodian failed to comply with the Council’s January 29, 2013 Interim Order because he failed to provide a certified confirmation of compliance to the Executive Director

⁹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹⁰ www.dictionary.com defines simultaneous as “existing, occurring, or operating *at the same time*; concurrent.”

within the required time frame, in accordance with N.J. Court Rule 1:4-4. Thus, the Custodian failed to fully comply with the Council's January 29, 2013 Interim Order.

Knowing and willful

OPRA states that:

“[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11(a)

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

“... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996).

The former Custodian violated N.J.S.A. 47:1A-6 by failing to provide a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10. The current Custodian also failed to comply with the Council's January 29, 2013 Interim Order by failing to provide a simultaneous certified confirmation of compliance. However, the Custodian did timely provide the records responsive to the Complainant's request. Therefore, it is concluded that the former and current Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although Custodian's Counsel, on behalf of the School District, provided the records responsive to the Complainant without redactions and within the extended period of time to do so, the Custodian failed to comply with the Council's January 29, 2013 Interim Order because he failed to provide a certified confirmation of compliance to the Executive Director within the required time frame, in accordance with N.J. Court Rule 1:4-4. Thus, the Custodian failed to fully comply with the Council's January 29, 2013 Interim Order.
2. The former Custodian violated N.J.S.A. 47:1A-6 by failing to provide a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10. The current Custodian also failed to comply with the Council's January 29, 2013 Interim Order by failing to provide a simultaneous certified confirmation of compliance. However, the Custodian did timely provide the records responsive to the Complainant's request. Therefore, it is concluded that the former and current Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

Approved By: Brandon D. Minde, Esq.
Executive Director

April 23, 2013



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
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INTERIM ORDER

January 29, 2013 Government Records Council Meeting

Claudia Vargas
(On behalf of The Philadelphia Inquirer)
Complainant

Complaint No. 2011-315

v.
Camden City School District (Camden)
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council ("Council") considered the January 22, 2013 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. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not carried her burden of proving a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10 and Burdick v. Franklin Township Board of Education(Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). *See also* Weimer v. Township of Middletown (Monmouth), GRC Complaint No. 2004-55 (August 2005). As such, the Custodian must release Dr. Young's attendance records for the years she served as Superintendent with appropriate redactions as necessary. The Custodian must also provide a redaction index detailing the information redacted and the lawful basis of the redactions.
2. **The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Interim Order Rendered by the
Government Records Council
On The 29th Day of January, 2013

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: January 30, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 29, 2013 Council Meeting**

Claudia Vargas
(on behalf of the Philadelphia Inquirer)¹
Complainant

GRC Complaint No. 2011-315

v.

Camden City School District (Camden)²
Custodian of Records

Records Relevant to Complaint: Total number of absences, including sick days, personal days, and vacation days for each school year former Superintendent Dr. Bessie LaFrae Young (“Dr. Young”) served as Superintendent.³

Request Made: September 12, 2011

Response Made: September 20, 2011

Custodian: Celeste Ricketts

GRC Complaint Filed: October 4, 2011⁴

Background

September 12, 2011

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. The Complainant indicates that the preferred method of delivery is e-mail.

September 20, 2011

Custodian’s response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant’s OPRA request on the sixth (6th) business day following receipt of such request. The Custodian states that the Complainant’s request is denied because OPRA exempts from the definition of a public record most personnel information on public employees except for “an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of pension received.” N.J.S.A. 47:1A-10. The Custodian further states that attendance records are not enumerated in the statute and thus are not public records under OPRA.

¹ No legal representation listed on record.

² Represented by Lester Taylor, Esq., of Florio, Perrucci, Steinhardt & Fader, LLC (Woodbury, NJ).

³ The Complainant requests additional documentation not relevant to the adjudication of this complaint.

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

October 4, 2011

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

- Complainant’s OPRA request dated September 12, 2011
- E-mail from the Custodian to the Complainant dated September 20, 2011.

The Complainant states that that she filed her OPRA request on September 12, 2011. The Complainant also states that the Custodian denied her request on September 20, 2011 stating that attendance records are not enumerated under N.J.S.A. 47:1A-10 as records releasable under OPRA and thus are not public records. The Complainant further states that after consulting with an attorney, attendance records are considered payroll records. The Complainant asserts that if Dr. Young is absent and being paid during those days, and those records reflect this, they become part of payroll records.

The Complainant does not agree to mediate this complaint.

November 2, 2011

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

November 16, 2011

E-mail 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 November 2, 2011 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.

November 21, 2011

Custodian’s SOI with the following attachments:⁵

- Complainant’s OPRA request dated September 12, 2011
- E-mail from the Custodian to the Complainant dated September 20, 2011.

The Custodian certifies that her search for the requested records included looking through records held by Human Resources and Board of Education (“BOE”) meeting minutes and agendas.⁶ The Custodian certifies that she received the Complainant’s OPRA request on September 12, 2011. The Custodian also certifies that she denied the request on September 20, 2011 because attendance records are not enumerated as releasable in N.J.S.A. 47:1A-10 and thus are not public records under OPRA.

⁵ Custodian’s Counsel states that consistent with the spirit of OPRA, the District is providing copies of minutes from six (6) different work session meeting regarding Dr. Young’s leave of absences. Counsel also provides a copy of an Excel spreadsheet showing Dr. Young’s used vacation days, sick days, personal days, funeral days and absences taken with or without pay from 2007 to present.

⁶ The Custodian did not certify whether any records responsive to the Complainant’s OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

Custodian's Counsel argues that OPRA exempts from the definition of a public record most personnel information except for an individual's "name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received" pursuant to N.J.S.A. 47:1A-10. Counsel also argues that personnel records are not classified as government records at all and "if, and only if, a document otherwise classified as a personnel record fits within one of the...exceptions to the general exemption for personnel records, it becomes subject to disclosure." Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581 (2011).

Counsel states that the Complainant asserts that Dr. Young's attendance records constitute "payroll records" and thus are subject to disclosure. Counsel argues that the term payroll record is not defined within OPRA. Counsel states that the NJ Department of Labor requires that payroll records of any employer show the following information for each pay period:

"1) the beginning and end dates; 2) the full name of each employee and the day or days in each calendar week on which services for remuneration are performed; 3) the total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is higher and services charges collected by the employer and distributed to workers if lieu of gratuities and tips; 4) the total amount of remuneration paid to all employees' 5) the number of weeks worked." N.J.A.C. 12:16-2.1.

Counsel argues that the GRC previously held "because certain types of sick leave payments are treated as wages within the meaning of the Unemployment Compensation and Temporary Disability Benefits laws for both tax and benefit entitlement purposes, the payroll record should include the type of leave so that it may be treated appropriately for tax and benefit purposes." See Jackson v. Kean University (Union), GRC Complaint No. 2002-98 (November 2003). Counsel states that in Jackson, *supra*, the complainant requested access to the names of those Kean University employees who were granted paid leaves of absences, the dates of the leaves, the employee's regular salary and the salary during the leave of absence from September 2000 through October 2002. Counsel argues that in the instant complaint, the Complainant did not seek information regarding paid or unpaid leaves of absences. Counsel argues that Dr. Young's daily attendance records do not constitute payroll records as defined by the GRC. Counsel also argues that by the GRC's own definition, payroll records only include attendance records to the extent that information that will allow a person to determine whether an employee took a leave of absence and the date range and pay associated with said leave of absence.

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 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 also states that:

“[n]otwithstanding the provisions of [OPRA]... the personnel or pension records of any individual in the possession of a public agency ... shall not be considered a government record and shall not be made available for public access, except that an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record...” N.J.S.A. 47:1A-10.

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 matter, the Complainant made a broad request seeking “total number of absences, including sick days, personal days, and vacation days for each school year Dr. Young served as Superintendent.” On its face, such a request is a request for information and does not specifically identify a government record. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534

(App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005).

However, in response to the Complainant's OPRA request, the Custodian informed the Complainant in writing on September 20, 2011 that attendance records are not releasable pursuant to N.J.S.A. 47:1A-10. Since the Custodian was able to identify a government record responsive to the Complainant's request, notwithstanding the overly broad nature of the request, the Council will determine whether such records are releasable under OPRA. See Gannett v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005).

The Council addressed the issue of whether attendance records were releasable under OPRA in Burdick v. Franklin Township Board of Education(Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). The complainant requested attendance record of all fulltime employees and all members of the administration at Franklin Township School from July 1, 2005 to June 23, 2006. The custodian denied the complainant access to the requested attendance records because personnel records are considered confidential and not public records. The custodian also stated that in those cases where attendance records were made public, those attendance records were part of the employee's payroll record. See Weimer v. Township of Middletown (Monmouth), GRC Complaint No. 2004-55 (August 2005) and Jackson v. Kean University (Union), GRC Complaint No. 2002-98 (February 2004). The Council ultimately held that "attendance records are considered payroll records which are subject to public access pursuant to N.J.S.A. 47:1A-10 and Weimer, supra." The custodian was ordered to disclose the requested attendance records.

The facts of this complaint are similar to Burdick, supra. The Complainant asserted in her Denial of Access Complaint that attendance records are considered payroll records. Conversely, the Custodian argued in the SOI that because attendance records are not enumerated as disclosable in N.J.S.A. 47:1A-10 they are not disclosable under OPRA. Custodian's Counsel argued in the SOI that Dr. Young's daily attendance records do not constitute payroll records as defined by the GRC. Counsel also argued in the SOI that payroll records only include attendance records to the extent that information that will allow a person to determine whether an employee took a leave of absence and the date range and pay associated with said leave of absence.

Therefore, pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10 and Burdick, supra. See also Weimer, supra. As such, the Custodian must release Dr. Young's attendance records for the years she served as Superintendent with appropriate redactions. The Custodian must also provide a redaction index detailing the information redacted and the lawful basis of the redactions.

Whether the Custodian's unlawful denial of access to the attendance records rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not carried her burden of proving a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10 and Burdick v. Franklin Township Board of Education(Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). *See also* Weimer v. Township of Middletown (Monmouth), GRC Complaint No. 2004-55 (August 2005). As such, the Custodian must release Dr. Young's attendance records for the years she served as Superintendent with appropriate redactions as necessary. The Custodian must also provide a redaction index detailing the information redacted and the lawful basis of the redactions.
2. **The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁷ to the Executive Director.⁸**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013

⁷ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁸ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.