



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

May 28, 2013 Government Records Council Meeting

Jim Giannakis
Complainant

Complaint No. 2012-152

v.

New Jersey Department of Education
Custodian of Record

At the May 28, 2013 public meeting, the Government Records Council (“Council”) considered the May 21, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that in balancing the Complainant’s need to the redacted individual against the New Jersey Department of Education’s need to keep the information confidential, non-disclosure is favored. Specifically, the complaint was filed by an anonymous person naming the individual as someone possessing evidence to support the complaint. Although it may be true that the Complainant has a right to know the name of his accuser, the accuser that filed the complaint is anonymous. Thus, disclosure of the individual’s name will not provide such relief. Additionally, as stated by the Complainant in the Denial of Access Complaint, the New Jersey Department of Education closed the complaint because the allegations therein were unfounded. The GRC is not convinced that the mere existence of the closed complaint adversely affects the Complainant’s profession and personal life at this point. The complaint was rendered unfounded and closed, thus there is no longer a threat that the complaint will impact the Complainant’s professional or personal life. As such, the Custodian lawfully denied access to the name of the individual in the New Jersey Department of Education complaint on the basis that disclosure of same would violate the citizen’s reasonable expectation of privacy. N.J.S.A. 47:1A-1.

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 28th Day of May, 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: June 4, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 28, 2013 Council Meeting**

**Jim Giannakis¹
Complainant**

GRC Complaint No. 2012-152

v.

**New Jersey Department of Education²
Custodian of Records**

Records Relevant to Complaint: Copies of all documents, complaints or records alleging that the Board of Education President for South Plainfield had a conflict of interest in the Sodexo contract as set forth in an April 17, 2012 report from the Office of Fiscal Accountability and Compliance (“OFAC”).

Request Made: April 24, 2012

Response Made: May 4, 2012

GRC Complaint Filed: May 23, 2012³

Background⁴

Request and Response:

On April 24, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the New Jersey Department of Education (“DOE”). On May 4, 2012, the Custodian responded in writing requesting an extension of time until May 8, 2012 since the request was forwarded to the OFAC for further information.

On May 8, 2012, the Custodian responded in writing denying access to the responsive record citing to reasonable expectation of privacy. On the same day, the Complainant e-mailed the Custodian requesting a redacted copy of the record. On May 14, 2012, the Custodian responded that she would have a reply by the end of the week. On the same day, the Complainant e-mailed the Custodian disputing the need for redactions. On May 21, 2012, the Custodian provided the Complainant with a redacted copy of the record.

¹ No legal representation listed on record.

² Maria Casale, Custodian of Records.

³ The GRC received the Denial of Access Complaint on said date.

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.

Denial of Access Complaint:

On May 23, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that the record sought was a complaint filed with the Governor’s Office in August 2011 in which the State determined that there was no validity to the allegations and the case was closed in April 2012. The Complainant notes that he is the subject of that complaint.

The Complainant states that he submitted this OPRA request to obtain the allegations and identity of the person making the allegations. The Complainant contends that although he received a redacted copy of the record, he believes that he is entitled to full access because the investigation is complete. The Complainant further argues that “reasonable expectation of privacy” is not one of OPRA’s exemptions.

Statement of Information:

On July 25, 2012, the Custodian submitted a Statement of Information (“SOI”) certifying that she received the Complainant’s OPRA request on April 25, 2012. The Custodian certifies that she forwarded the request to the OFAC, who returned the responsive record: an anonymous e-mail containing the name of an individual named by the anonymous complainant as possessing evidence to support the complaint. The Custodian certifies that the record contained a redaction on the first (1st) page and that the OFAC subsequently provided an original copy without a redaction. The Custodian certifies that she believed that the redaction of the individual identified in the e-mail would be necessary.

The Custodian certifies that she sought advice and was directed by the Attorney General’s Office (“AG”) to contact the individual at issue to see if there was any objection to disclosure. The Custodian certifies that the individual objected to disclosure of identifying information due to fear of reprisal and an on-going investigation with another agency. The Custodian certifies that based on the individual’s response, the AG advised her to deny access to an unredacted copy of the record, which she did on May 8, 2012. The Custodian certifies that after receiving the Complainant’s May 8, 2012 e-mail seeking a redacted copy of the record, the Custodian conferred with the AG and disclosed a redacted version of the record on May 21, 2012.

Balancing Test Questionnaires:

On May 1, 2013, the GRC sent balancing test questionnaires to both the Complainant and Custodian. On May 2, 2013, the Complainant submitted his questionnaire with the following responses:

1. Why do you need the requested record or information?

Response: The requested record consists of a complaint filed with DOE against the Complainant by an unknown party alleging that he engaged in improper dealings with a vendor. The Complainant is employed by a company that provides services to boards of

education throughout the State. Because the complaint had the potential to adversely impact his employment, the Complainant believes he has the right to know the identity of his accuser. U.S. Const. amend V. The Complainant needs a copy of the unredacted complaint in order to assess whether legal action is warranted against the party for filing a false complaint. Because the complaint is closed, the party should have no reasonable expectation of privacy and disclosure of the party will not deter others from filing complaints with DOE.

2. How important is the requested record or information to you?

Response: Access is extremely important. The Complainant wants to identify his accuser and assess whether legal action may be taken against the party which is likely impossible unless he knows the identity of the complaining party

3. Do you plan to redistribute the requested record or information?

Response: The Complainant does not plan to distribute the material to anyone except his attorney should the need arise.

4. Will you use the requested record or information for unsolicited contact of the individuals named in the government record?

Response: The Complainant will not use the information for unsolicited contact.

On May 8, 2013, the GRC forwarded the balancing test to DOE's current Custodian, Mr. Paul Crupi, and advised that an extension of time until May 10, 2013, to submit said test would be afforded. On May 9, 2013, the current Custodian submitted his questionnaire with the following responses:

1. The type of record requested.

Response: The responsive records are any complaints filed with DOE that alleged an improper business relationship between the Complainant and a Board of Education with which his company was contracted to perform a service.

2. The information the requested records do or might contain.

Response: The redacted information included identifying information of a person who was involved in submitting the complaint.

3. The potential harm in any subsequent non-consensual disclosure of the requested records.

Response: DOE always redacts personal information to protect individuals from unwanted intrusions into their privacy. Privacy concerns are raised where disclosure of such personal information can invite unsolicited contact, intrusion, or retaliation based on

the information revealed. Releasing the individual's name could discourage future persons from coming forward with potential complaints for fear of reprisal. DOE relies, in part, on complaints from individuals to identify potential violations so that they can be investigated. Disclosure of the individual's name could chill this valuable source of information in the future.

4. The injury from disclosure to the relationship in which the requested record was generated.

Response: The redacted information did not alter or change the content of the complaint filed.

5. The adequacy of safeguards to prevent unauthorized disclosure.

Response: There are no safeguards to prevent unauthorized disclosure, which is why we redacted the information on the forms.

6. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access.

Response: The Custodian does not believe so. The Custodian believes that an individual's reasonable expectation of privacy clearly includes identifying information, that, if disclosed, would facilitate actions of retaliation or harassment.

Analysis⁵

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.

OPRA provides that:

"... a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy ..." (Emphasis added.) N.J.S.A. 47:1A-1.

Since privacy interests are at issue here, the GRC asked both the Complainant and the Custodian to respond to balancing test questions so the Council could employ the balancing test established by the Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995). This test enables the

⁵ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

Council to balance DOE's asserted need to protect the privacy of individuals against the Complainant's asserted need to access the redacted information.

Here, the original Custodian provided the Complainant with a redacted copy of a anonymous e-mailed complaint filed against the Complainant at DOE. This redaction contained the name of the individual that filed the complaint. The Complainant disputed the redaction arguing that the record should be disclosed in its entirety. Since DOE asserted a privacy interest, the GRC requested that both parties submit balancing test questionnaires.

In response to the balancing test, the current Custodian stated that DOE redacted the name as a matter of policy to protect individuals from unwanted intrusion and to avoid discouraging members of the public from filing and/or participating in the complaint process. The Custodian stated that the redactions did not alter the record, there are no safeguards preventing unauthorized disclosure of the name, and no express statutory mandates, articulated policy or other interest militated towards access.

Conversely, the Complainant stated that his need for access is high. The Complainant stated that the complaint was filed against him and could have adversely impacted his professional and personal life. The Complainant stated that it is his right to know the identity of his accuser and to assess whether additional legal action against that individual is warranted. The Complainant stated that he would not distribute the information to anyone except an attorney should the need arise and that no unsolicited contact would result from disclosure.

In balancing the Complainant's need to the redacted individual against DOE's need to keep the information confidential, non-disclosure is favored. Specifically, the complaint was filed by an anonymous person naming the individual as someone possessing evidence to support the complaint. Although it may be true that the Complainant has a right to know the name of his accuser, the person that filed the complaint is anonymous. Thus, disclosure of the individual's name will not provide such relief. Additionally, as stated by the Complainant in the Denial of Access Complaint, DOE closed the complaint because the allegations therein were unfounded. The GRC is not convinced that the mere existence of the closed complaint adversely affects the Complainant's profession and personal life at this point. The complaint was rendered unfounded and closed, thus there is no longer a threat that the complaint will impact the Complainant's professional or personal life. As such, the Custodian lawfully denied access to the name of the individual in the DOE complaint on the basis that disclosure of same would violate the citizen's reasonable expectation of privacy. N.J.S.A. 47:1A-1.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that in balancing the Complainant's need to the redacted individual against the New Jersey Department of Education's need to keep the information confidential, non-disclosure is favored. Specifically, the complaint was filed by an anonymous person naming the individual as someone possessing evidence to support the complaint. Although it may be true that the Complainant has a right to know the name of his accuser, the accuser that filed the complaint is anonymous. Thus, disclosure of the individual's name will not provide such relief. Additionally, as stated by the Complainant in the

Denial of Access Complaint, the New Jersey Department of Education closed the complaint because the allegations therein were unfounded. The GRC is not convinced that the mere existence of the closed complaint adversely affects the Complainant's profession and personal life at this point. The complaint was rendered unfounded and closed, thus there is no longer a threat that the complaint will impact the Complainant's professional or personal life. As such, the Custodian lawfully denied access to the name of the individual in the New Jersey Department of Education complaint on the basis that disclosure of same would violate the citizen's reasonable expectation of privacy. N.J.S.A. 47:1A-1.

Prepared By: Frank F. Caruso
Senior Case Manager

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

May 21, 2013