



## NEW JERSEY GOVERNMENT RECORDS COUNCIL Administrative Complaint Disposition – Unripe Cause of Action

**GRC Complaint No.:** 2012-323

**Complainant:** Michael Inzelbuch

**Public Agency:** Lakewood Board of Education (Ocean)

**Custodian of Record:** Thomas D'Ambola

**Date of Request:** December 4, 2012 and December 5, 2012<sup>1</sup>

**Date of Complaint:** December 17, 2012<sup>2</sup>

**Complaint Disposition:** The Complainant provided his OPRA requests for records to the Custodian on the above dates requesting thirty-seven (37) items. Many of the items requested records over a period of time exceeding eight (8) months and asked the Custodian to conduct research and search numerous files for responsive records; as an example, request item number 13 of the Complainant's December 4, 2012 request states:

*“Any and all contracts between the Board, its agents or assigns and those vendors who provide NCLB (including but not limited to Title 1 services) and/or Chapters 192, 193, 226, or IDEIA services – also – any and all correspondences with regard to same.”*

None of the requested records were immediate access records because the Complainant failed to specifically identify a record subject to immediate access.

The Custodian's Counsel responded to the requests on the seventh (7<sup>th</sup>) business day following receipt of the earlier of the two requests by requesting an extension of time until February 12, 2012, in order to grant or deny access to the requested records. In support of his request for the extension of time the Custodian's Counsel cited the voluminous nature of the OPRA requests, the need to determine if responsive records are subject to disclosure, the potential need to redact certain material, and the approaching holiday season school closure. The Complainant replied by informing the Custodian that the request for an extension of time was unacceptable and he subsequently verified his complaint on December 16, 2012.

OPRA provides that the Custodian "...shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request..." N.J.S.A. 47:1A-5.i. Further, the Council has determined that a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification *or requesting an extension of time within the statutorily mandated seven (7) business days* results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order

<sup>1</sup> The Custodian certified that he received the OPRA requests on these same dates.

<sup>2</sup> The GRC received the Denial of Access Complaint on said date.



October 31, 2007). (Emphasis added.) *See also* Werner v. New Jersey Civil Service Commission, GRC Complaint No. 2011-151 (December 2012).

Here, due to the nature of the requests and the extent of the records sought it was reasonable for the Custodian to seek an extension of time until February 12, 2012 to grant or deny access to the requested records. Therefore, because the requested records are not immediate access records, and because the Complainant verified his complaint before the statutory time period for the Custodian to respond *as extended* had expired; the complaint is materially defective and must be dismissed.

**Applicable OPRA Provision:** "...[A] custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request..." N.J.S.A. 47:1A-5.i.

"A person who is denied access to a government record by the custodian of the record...may institute a proceeding to challenge the custodian's decision by filing...a complaint with the Government Records Council..." 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.**

**Effective Date of Disposition:** February 26, 2013

Prepared By: John E. Stewart, Esq.

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

Date: February 19, 2012

**Distribution Date: February 26, 2013**