



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

January 26, 2016 Government Records Council Meeting

Rotimi Owoh, Esq.
(On behalf of O.R.)
Complainant

Complaint No. 2012-330

v.

West Windsor-Plainsboro Regional
School District (Mercer)
Custodian of Record

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 2016 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 the Council dismisses the complaint because the Complainant withdrew same via an e-mail to the GRC on December 16, 2015, based on a settlement between the parties. Therefore, no further adjudication is required.

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 January, 2016

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 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 26, 2016 Council Meeting**

**Rotimi Owoh, Esq.
(On behalf of O.R.)¹
Complainant**

GRC Complaint No. 2012-330

v.

**West Windsor-Plainsboro
Regional School District (Mercer)²
Custodian of Records**

Records Relevant to Complaint:

1. On-site inspection and extraction of metadata from the electronic stamp used to put the date and time on the discipline reports (screen shots) that were provided to the Division on Civil Rights (“DCR”) as stated in the attached letter dated February 28, 2012. The top right corner of each of the discipline records is/are dated February 6, 2006. The times range from 1:05 PM through 1:58 PM on the same date.
2. On-site inspection and extraction of metadata from the district computer used to create the electronic date and time stamps that appear at the top corner of each of the discipline records (screen shots) that were provided to the DCR as stated in the attached letter dated February 28, 2012.
3. On-site inspection of the serial number, make and model of the district computer used to create each of the discipline records (screen shots) that were provided to the DCR as stated in the attached letter dated February 28, 2012.
4. Copies of all e-mail communications and metadata from the school district computers relating to e-mails between Ms. Hutner and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.
5. Copies of all e-mail communications and metadata from the school district computers relating to e-mails between Mr. Rick Cave and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.

¹ The Complainant is an attorney who filed the subject OPRA request and subsequent Denial of Access Complaint on behalf of his client, O.R., a student.

² Represented by Eric L. Harrison, Esq. of Methfessel & Werbel (Edison, NJ).

6. On-site inspection and extraction of metadata from the school district computers relating to e-mails between Mr. Rick Cave and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.
7. On-site inspection and extraction of metadata from the school district computers relating to e-mails between Ms. Hutner and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.
8. On-site inspection and copying of each of the student discipline reports (screen shots) that were provided to the DCR according to the attached letter from Mr. Harrison dated February 28, 2012. These reports include one relating to a student named “JPD” whose mother already gave written consent to Mr. Harrison and the school district and one relating to the Complainant’s client.
9. Metadata and hash marks relating to each of the student discipline reports (screen shots) that were provided to the DCR according to the attached letter from Mr. Harrison dated February 28, 2012.
10. Copies of e-mail to include the metadata from the school district computers relating to e-mails between Mr. Harrison and Mr. Rick Case³ on February 5, 2008. Mr. Harrison stated in an e-mail dated May 8, 2012 that Mr. Rick Cave e-mailed the twelve (12) discipline reports to him as GIF files.
11. On-site inspection and extraction of metadata from the school district computers relating to e-mails between Mr. Harrison and Mr. Rick Case⁴ on February 5, 2008. Mr. Harrison stated in an e-mail dated May 8, 2012 that Mr. Rick Cave e-mailed the twelve (12) discipline reports to him as GIF files.
12. On-site inspection of the serial number, make and model of the district computer used to create each of the discipline reports (screen shots) that Mr. Harrison claimed were sent to him as GIF files in 2008.

Custodian of Record: Geraldine Hutner

Request Received by Custodian: December 14, 2012

Response Made by Custodian: December 21, 2012

GRC Complaint Received: December 28, 2012

Background

February 26, 2013 Council Meeting:

At its February 26, 2013 public meeting, the Council considered the February 19, 2013 Findings and Recommendations of the Executive Director and all related documentation

³ The Complainant refers to this individual in previous request items as “Mr. Rick Cave.”

⁴ The Complainant refers to this individual in previous request items as “Mr. Rick Cave.”

submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian lawfully denied access to the Complainant's request item nos. 1, 2, 3 and 12 because said request items do not seek "government records" as defined in N.J.S.A. 47:1A-1.1 and thus the request items are invalid pursuant to MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).
2. The Complainant's request item nos. 4, 5, 6, 7, 10 and 11 are invalid requests because the Complainant fails to adequately identify the content and/or subject of the requested e-mails pursuant to Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 8, 2010). As such, the Custodian has not unlawfully denied access to the requested e-mails and the GRC will not address the Custodian Counsel's claim of attorney-client privilege to said e-mails.
3. The Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant's December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008). *See also* Wolosky v. Twp. of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012). Nevertheless, the Custodian's Counsel did provide the Complainant copies of the discipline reports in response to the December 14, 2012 OPRA request, but not on-site inspection.
4. Similar to the Council's decisions in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg'l Sch. Dist. (Mercer), GRC Complaint No. 2012-91 (January 2013) and Owoh (on behalf of Delores Nicole Simmons) v. West Windsor-Plainsboro Reg'l Sch. Dist. (Mercer), GRC Complaint No. 2012-130 (January 2013), the Council should refer this matter to the Office of Administrative Law ("OAL") for a hearing to resolve the facts for the following reasons:
 - a) There are contested facts regarding whether the PDF records provided to the Complainant by the Custodian's Counsel contained the requested metadata.
 - b) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
 - c) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.

Procedural History:

On February 27, 2013, the Council distributed its Interim Order to all parties. On May 7, 2013, the complaint was transmitted to the OAL.

On December 16, 2015, the Complainant e-mailed the GRC, stating that he was withdrawing this complaint based on a settlement between the parties. On the same day, the GRC forwarded the Complainant's withdrawal letter to the OAL, requesting that OAL withdraw the matter from consideration and return the complaint. On December 28, 2015, the OAL returned this complaint to the GRC.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council dismiss the complaint because the Complainant withdrew same via an e-mail to the GRC on December 16, 2015, based on a settlement between the parties. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover
Executive Director

January 19, 2016



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
Commissioner

INTERIM ORDER

February 26, 2013 Government Records Council Meeting

Rotimi Owoh (on behalf of O.R.)
Complainant

Complaint No. 2012-330

v.

West Windsor-Plainsboro Regional School District (Mercer)
Custodian of Record

At the February 26, 2013 public meeting, the Government Records Council (“Council”) considered the February 19, 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. The Custodian lawfully denied access to the Complainant’s request item nos. 1, 2, 3 and 12 because said request items do not seek “government records” as defined in N.J.S.A. 47:1A-1.1 and thus the request items are invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).
2. The Complainant’s request item nos. 4, 5, 6, 7, 10 and 11 are invalid requests because the Complainant fails to adequately identify the content and/or subject of the requested e-mails pursuant to Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 8, 2010). As such, the Custodian has not unlawfully denied access to the requested e-mails and the GRC will not address the Custodian Counsel’s claim of attorney-client privilege to said e-mails.
3. The Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant’s December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). *See also* Wolosky v. Township of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012). Nevertheless, the Custodian’s Counsel did provide the Complainant copies of the discipline reports in response to the December 14, 2012 OPRA request, but not on-site inspection.
4. Similar to the Council’s decisions in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-91 (January

2013) and Owoh (on behalf of Delores Nicole Simmons) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-130 (January 2013), the Council should refer this matter to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts for the following reasons:

- a) There are contested facts regarding whether the PDF records provided to the Complainant by the Custodian’s Counsel contained the requested metadata.
- b) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
- c) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney’s fee.

Interim Order Rendered by the
Government Records Council
On The 26th Day of February, 2013

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

Robin Berg Tabakin, Esq., Chair
Government Records Council

Decision Distribution Date: February 27, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2013 Council Meeting**

**Rotimi Owoh (on behalf of O.R.)¹
Complainant**

GRC Complaint No. 2012-330

v.

**West Windsor-Plainsboro Regional School District (Mercer)²
Custodian of Records**

Records Relevant to Complaint:

1. On-site inspection and extraction of metadata from the electronic stamp used to put the date and time on the discipline reports (screen shots) that were provided to the Division on Civil Rights (“DCR”) as stated in the attached letter dated February 28, 2012. The top right corner of each of the discipline records is/are dated February 6, 2006. The times range from 1:05 PM through 1:58 PM on the same date.
2. On-site inspection and extraction of metadata from the district computer used to create the electronic date and time stamps that appear at the top corner of each of the discipline records (screen shots) that were provided to the DCR as stated in the attached letter dated February 28, 2012.
3. On-site inspection of the serial number, make and model of the district computer used to create each of the discipline records (screen shots) that were provided to the DCR as stated in the attached letter dated February 28, 2012.
4. Copies of all e-mail communications and metadata from the school district computers relating to e-mails between Ms. Hutner and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.
5. Copies of all e-mail communications and metadata from the school district computers relating to e-mails between Mr. Rick Cave and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.
6. On-site inspection and extraction of metadata from the school district computers relating to e-mails between Mr. Rick Cave and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr.

¹ The Complainant is an attorney who filed the subject OPRA request and subsequent Denial of Access Complaint on behalf of his client, O.R., a student.

² Represented by Eric L. Harrison, Esq. of Methfessel & Werbel (Edison, NJ).

- Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.
7. On-site inspection and extraction of metadata from the school district computers relating to e-mails between Ms. Hutner and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.
 8. On-site inspection and copying of each of the student discipline reports (screen shots) that were provided to the DCR according to the attached letter from Mr. Harrison dated February 28, 2012. These reports include one relating to a student named “JPD” whose mother already gave written consent to Mr. Harrison and the school district and one relating to the Complainant’s client.
 9. Metadata and hash marks relating to each of the student discipline reports (screen shots) that were provided to the DCR according to the attached letter from Mr. Harrison dated February 28, 2012.
 10. Copies of e-mail to include the metadata from the school district computers relating to e-mails between Mr. Harrison and Mr. Rick Case³ on February 5, 2008. Mr. Harrison stated in an e-mail dated May 8, 2012 that Mr. Rick Cave e-mailed the twelve (12) discipline reports to him as GIF files.
 11. On-site inspection and extraction of metadata from the school district computers relating to e-mails between Mr. Harrison and Mr. Rick Case⁴ on February 5, 2008. Mr. Harrison stated in an e-mail dated May 8, 2012 that Mr. Rick Cave e-mailed the twelve (12) discipline reports to him as GIF files.
 12. On-site inspection of the serial number, make and model of the district computer used to create each of the discipline reports (screen shots) that Mr. Harrison claimed were sent to him as GIF files in 2008.

Request Made: December 14, 2012 and December 16, 2012

Response Made: December 21, 2012

Custodian: Geraldine Hutner

GRC Complaint Filed: December 28, 2012⁵

Background

December 28, 2012

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

- Complainant’s OPRA request dated December 14, 2012, with attachments
- Custodian Counsel’s response to the request dated December 21, 2012, with attachments.
- E-mail from Complainant to Custodian’s Counsel dated December 23, 2012

³ The Complainant refers to this individual in previous request items as “Mr. Rick Cave.”

⁴ The Complainant refers to this individual in previous request items as “Mr. Rick Cave.”

⁵ The GRC received the Denial of Access Complaint on said date.

- E-mail from Custodian’s Counsel to Complainant dated December 23, 2012⁶

The Complainant states that he submitted his OPRA request via fax on December 14, 2012 and via e-mail on December 16, 2012. The Complainant states that he received a written response from the Custodian’s Counsel on December 21, 2012. Counsel’s responses to the Complainant’s itemized requests are detailed below:

1. Copies of the redacted disciplinary screen shots which Counsel provided to the DCR in February 2006 were previously provided to the Complainant on several occasions, most recently by letter dated December 11, 2012 in response to the Complainant’s OPRA request dated December 9, 2012. Counsel states that while the Complainant asserts the date and time listings are a product of an “electronic stamp,” there exists no record by this name or functional description. Because the record does not exist and therefore there is no metadata to extract, this request is denied.
2. As a computer is not a record within the meaning of OPRA, this request is denied.
3. As a computer is not a record within the meaning of OPRA, this request is denied.
4. This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
5. This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
6. This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
7. This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
8. The redacted student discipline reports which Counsel provided to the DCR in February 2006 were included in the materials provided to the Complainant in response to his OPRA request dated December 9, 2012. Counsel states that said response was both e-mailed and mailed to the Complainant, and that another copy is attached with this instant letter in PDF format. Counsel states that the reports do not exist in any other format.
9. To the extent the redacted discipline reports bear metadata and/or hash marks, such would be discernible from the attached PDF file containing them.
10. This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
11. This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
12. As a computer is not a record within the meaning of OPRA, this request is denied.

⁶ The Complainant attaches additional records which are not relevant to the adjudication of this complaint. Rotimi Owoh (On behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), 2012-330 – Findings and Recommendations of the Executive Director 3

The Complainant asserts that Counsel's response essentially denied all twelve (12) of the items in his OPRA request. The Complainant states that he attempted to receive clarification of Counsel's response on December 23, 2012. The Complainant contends that the Custodian violated OPRA and the common law right of access by failing to grant on-site inspection of the requested records.⁷ The Complainant asserts that the Custodian also denied access to metadata, which is an electronic record under OPRA. The Complainant also contends that Counsel's claim of attorney-client privilege is overbroad since his request allowed the District to redact any confidential or privileged parts of the requested records. Finally, the Complainant states that he seeks the award of prevailing party attorney's fees in this matter.

The Complainant does not agree to mediate this complaint.

January 14, 2013

Custodian's Statement of Information ("SOI") with the following attachments⁸:

- Complainant's OPRA request dated December 14, 2012, with attachments
- Custodian Counsel's response to the Complainant's request dated December 21, 2012
- E-mail from Complainant to Custodian's Counsel dated December 21, 2012⁹
- E-mail from Custodian's Counsel to Complainant dated December 22, 2012¹⁰
- E-mail from Complainant to Custodian's Counsel dated December 22, 2012¹¹
- E-mail from Custodian's Counsel to Complainant dated December 22, 2012¹²
- E-mail from Complainant to Custodian's Counsel dated December 23, 2012¹³
- E-mail from Custodian's Counsel to Complainant dated December 23, 2012¹⁴
- E-mail from Custodian's Counsel to Complainant dated January 3, 2013¹⁵

The Custodian certifies that she received the Complainant's OPRA request on December 14, 2012. The Custodian certifies that she asked her legal counsel to respond

⁷ The GRC's authority is limited to adjudicating denials of access under OPRA. The GRC does not have the authority to address a requestor's common law right of access and will not do so here.

⁸ The Custodian attached additional records which are not relevant to the adjudication of this Denial of Access Complaint.

⁹ In said e-mail, the Complainant disputes Counsel's response to the Complainant's OPRA request as well as the existence of records responsive to the request. The Complainant does not request any new records in this e-mail.

¹⁰ In said e-mail, Counsel responds to the Complainant's dispute of Counsel's response to the OPRA request.

¹¹ In said e-mail, the Complainant asks questions regarding Counsel's response to the Complainant's OPRA request. The Complainant does not request any new records in this e-mail.

¹² In said e-mail, Counsel responds to the Complainant's questions raised in the Complainant's December 22, 2012 e-mail.

¹³ In said e-mail, the Complainant asks questions regarding Counsel's response to the Complainant's OPRA request. The Complainant also states, "[p]lease ask your client if they have an inventory (record) of computers within the school district. If you want to consider this a modification of the original request so be it."

¹⁴ In said e-mail, Counsel responds to the Complainant's dispute of Counsel's response to the OPRA request.

¹⁵ In said e-mail, Counsel asks whether the Complainant is seeking the computer inventory from 2006 or as of present date.

to the Complainant's OPRA request because some of the records sought would be maintained either by Counsel or by the District's liability insurer. The Custodian also certifies that she conferred with Counsel to confirm that his responses to the Complainant's OPRA request were accurate. The Custodian certifies that Counsel responded to the Complainant's supplemental e-mail dated December 22, 2012 on the same date, and also responded to the Complainant's e-mail dated December 23, 2012 on the same date as well as January 3, 2013.

The Custodian also certifies that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services is not applicable because no records responsive were destroyed.

The Custodian certifies that item no. 1 of the Complainant's OPRA request sought on-site inspection and extraction of metadata of the electronic stamp used to put the date and time on the discipline reports that were provided to the DCR. The Custodian contends that the electronic stamp in question is not a record as defined in OPRA. The Custodian certifies that item nos. 2-3 and item no. 12 of the Complainant's OPRA request sought the inspection of a computer and its serial number, make and model. The Custodian certifies that Counsel denied said requests on the basis that a computer is not a record as defined in OPRA.

Regarding request item nos. 4-7 and item nos. 10-11, the Custodian certifies that the Complainant sought e-mails and metadata between herself, Counsel, and Director of Technology Rick Cave. The Custodian certifies that Counsel denied access to said e-mails on the basis that said e-mails are exempt under the attorney-client privilege since all e-mail communications between Counsel, the Clerk and Mr. Cave related solely to legal matters since the Complainant's first administrative action in 2004.

The Custodian certifies that item no. 8 of the Complainant's request sought inspection and copying of the student discipline reports that were provided to the DCR, with any personally identifying information redacted, as well as the metadata and hash marks for such reports. The Custodian certifies that Counsel has explained to the Complainant on numerous occasions that the Custodian printed the reports and provided them to Counsel with handwritten notes on them. The Custodian certifies that Counsel redacted the reports to remove personal identifiers, scanned them and submitted them to DCR in 2006 and Superior Court in 2008. The Custodian certifies that these reports are maintained in Counsel's file management system in PDF format and have been provided to the Complainant in both paper and PDF format. The Custodian certifies that to the extent the PDF files have extractable metadata or hash marks, such may be extracted from the PDF files that have been e-mailed and provided on CD-ROM to the Complainant on numerous occasions, including December 21, 2012 (via e-mail). The Custodian certifies that the reports exist nowhere else and in no other format.

The Custodian's Counsel submitted a certification reiterating and attesting to the same statements the Custodian provided above.

January 20, 2013

The Complainant's response to the Custodian's SOI. The Complainant makes the following claims:¹⁶

1. Metadata and hash marks are records. The Complainant has a right of access to metadata under OPRA and the common law right of access.¹⁷
2. Gaining access to metadata will not reveal personal identifying information about individual students.¹⁸
3. Counsel's statement that metadata and hash marks are available from the PDF documents previously provided is inaccurate.¹⁹
4. The Complainant has a right to on-site inspection of requested records whether the records are located at Counsel's office or at the school district. It is not up to Counsel to decide whether on-site inspection is reasonable or not.
5. The Complainant has a right to on-site inspection and extraction of pertinent metadata from electronic discipline reports relating to the Complainant's client and the student "JPD" whose mother gave written consent.
6. Counsel does not have to create any new records in order to comply with the OPRA request item relating to discipline reports.
7. Counsel does not have to create a new record to comply with the OPRA request because Counsel claims that the District's SASI system is never purged. Therefore, the electronic records must still exist in the database.
8. Parental right to on-site inspection of electronic records does not depend on whether the records contain metadata.
9. The Complainant has the ability and the support of computer experts to determine during the on-site inspection whether the requested records in the GIF file and the records in the SASI system contain pertinent metadata. Just because Counsel cannot see metadata with his human eyes does not mean it does not exist.
10. Counsel's denial of request item nos. 4, 5, 6, 7, 10 and 11 on the basis of attorney-client privilege is overbroad.
11. It is a violation of OPRA to deny access to request item nos. 1-2.
12. It is a violation of OPRA to deny access to request item nos. 3 and 12.

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.

¹⁶ For brevity, the GRC does not expand on the Complainant's claims here.

¹⁷ The GRC's authority is limited to adjudicating denials of access under OPRA. The GRC does not have the authority to address a requestor's common law right of access and will not do so here.

¹⁸ The Complainant attaches an "expert report" prepared by Axiana, LLC in support of this claim.

¹⁹ The Complainant attaches an "expert report" prepared by Computer Data Forensics, LLC in support of this claim.

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 ... A government record shall not include... any record within the attorney-client privilege.” (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 Complainant states that he submitted his OPRA request via fax on December 14, 2012 and via e-mail on December 16, 2012. The Complainant states that he received a written response from the Custodian’s Counsel on December 21, 2012, in which Counsel denied access to the Complainant’s request.

Request Item Nos. 1, 2, 3 and 12

The Complainant’s request item nos. 1, 2, 3 and 12, as well as the Custodian Counsel’s responses are detailed below:

Complainant’s Request Item	Counsel’s Response to Request
Request item no. 1: On-site inspection and extraction of metadata from the electronic stamp used to put the date and time on the discipline reports (screen shots) that were provided to the DCR as stated in the attached letter dated February 28, 2012. The top right corner of each of the discipline records is/are dated February 6, 2006. The times range from 1:05 PM through 1:58 PM on the same date.	Copies of the redacted disciplinary screen shots which Counsel provided to the DCR in February 2006 were previously provided to the Complainant on several occasions, most recently by letter dated December 11, 2012 in response to the Complainant’s OPRA request dated December 9, 2012. Counsel states that while the Complainant asserts the date and time listings are a product of an “electronic stamp,” there exists no record by this name or functional description. Because the record does not exist and therefore there is no metadata to extract, this request is denied.

Request item no. 2: On-site inspection and extraction of metadata from the district computer used to create the electronic date and time stamps that appear at the top corner of each of the discipline records (screen shots) that were provided to the DCR as stated in the attached letter dated February 28, 2012.	As a computer is not a record within the meaning of OPRA, this request is denied.
Request item no. 3: On-site inspection of the serial number, make and model of the district computer used to create each of the discipline records (screen shots) that were provided to the DCR as stated in the attached letter dated February 28, 2012.	As a computer is not a record within the meaning of OPRA, this request is denied.
Request item no. 12: On-site inspection of the serial number, make and model of the district computer used to create each of the discipline reports (screen shots) that Mr. Harrison claimed were sent to him as GIF files in 2008.	As a computer is not a record within the meaning of OPRA, this request is denied.

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...” N.J.S.A. 47:1A-1.1.

Additionally, the New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records ‘readily accessible for inspection, copying, or examination.’* N.J.S.A. 47:1A-1.” (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency’s files.” (Emphasis added.) *Id.* at 549.

Item no. 1 of the Complainant’s OPRA request in this instant matter seeks inspection of an electronic stamp used to put the date and time on student discipline reports. An electronic date stamp does not meet the definition of a “government record” under OPRA.

Item no. 2 of the Complainant’s OPRA request seeks inspection of metadata from the district computer used to create the electronic stamps sought in request item no. 1. A computer is a piece of technological equipment and does not meet the definition of a “government record” under OPRA.

Item nos. 3 and 12 of the Complainant's OPRA request seek information regarding a district computer: the serial number, make and model of said computer. These requests are requests for information and not for specifically identifiable government records, and thus are invalid requests.²⁰

Therefore, the Custodian lawfully denied access to the Complainant's request item nos. 1, 2, 3 and 12 because said request items do not seek "government records" as defined in N.J.S.A. 47:1A-1.1 and thus the request items are invalid pursuant to MAG, supra.

Request Item Nos. 4, 5, 6, 7, 10 and 11

The Complainant's request item nos. 4, 5, 6, 7, 10 and 11, as well as the Custodian Counsel's responses are detailed below:

Complainant's Request Item	Counsel's Response to Request
Request item no. 4: Copies of all e-mail communications and metadata from the school district computers relating to e-mails between Ms. Hutner and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.	This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
Request item no. 5: Copies of all e-mail communications and metadata from the school district computers relating to e-mails between Mr. Rick Cave and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.	This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.
Request item no. 6: On-site inspection and extraction of metadata from the school district computers relating to e-mails between Mr. Rick Cave and Eric Harrison	This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.

²⁰ Additionally, the Complainant's e-mail to the Custodian's Counsel dated December 23, 2013, wherein the Complainant asked if the District maintained a computer inventory, is not a clarification of the OPRA request because said e-mail asks a question and does not request an actual record.
 Rotimi Owoh (On behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), 2012-330 – Findings and Recommendations of the Executive Director 9

<p>between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.</p>	
<p>Request item no. 7: On-site inspection and extraction of metadata from the school district computers relating to e-mails between Ms. Hutner and Eric Harrison between January – March 2008. In a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008.</p>	<p>This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.</p>
<p>Request item no. 10: Copies of e-mail to include the metadata from the school district computers relating to e-mails between Mr. Harrison and Mr. Rick Case²¹ on February 5, 2008. Mr. Harrison stated in an e-mail dated May 8, 2012 that Mr. Rick Cave e-mailed the twelve (12) discipline reports to him as GIF files.</p>	<p>This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.</p>
<p>Request item no. 11: On-site inspection and extraction of metadata from the school district computers relating to e-mails between Mr. Harrison and Mr. Rick Case²² on February 5, 2008. Mr. Harrison stated in an e-mail dated May 8, 2012 that Mr. Rick Cave e-mailed the twelve (12) discipline reports to him as GIF files.</p>	<p>This request calls for communications between Counsel and a client. As such, the request demands privileged attorney/client communications and will not be provided.</p>

The Complainant’s six (6) OPRA request items described above are similar in that the Complainant is seeking e-mails between the Custodian’s Counsel and either the Custodian, or the District’s Director of Technology. In all six (6) of the request items the Complainant identifies either a specific date or range of dates for the requested e-mails. However, the Complainant fails to specify a specific subject matter or content of the e-mails.

²¹ The Complainant refers to this individual in previous request items as “Mr. Rick Cave.”

²² The Complainant refers to this individual in previous request items as “Mr. Rick Cave.”

The GRC established criteria deemed necessary to specifically identify an e-mail communication in Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 8, 2010). In Elcavage, the Council determined that “[i]n accordance with MAG, *supra*, and its progeny, in order to specifically identify an e-mail the OPRA request must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) identification of the sender and/or the recipient thereof.” *Id.*

As previously stated, the Complainant fails to identify the specific content and/or subject of the requested e-mails in request item nos. 4, 5, 6, 7, 10 and 11. The Complainant includes blanket statements in said requests such as: “[i]n a certification filed with the Government Records Council, Mr. Harrison stated that the same discipline reports (that were provided to the DCR) were sent to him via GIF files in 2008. Mr. Harrison also stated that all of the GIF files were created between January and March 2008” and “Mr. Harrison stated in an e-mail dated May 8, 2012 that Mr. Rick Cave e-mailed the twelve (12) discipline reports to him as GIF files.”

These statements do not adequately specify the e-mails sought. It is unclear whether the Complainant is seeking only the e-mails in which the GIF files were transmitted, or all of the e-mails transmitted within the identified timeframe.

Therefore, the Complainant’s request item nos. 4, 5, 6, 7, 10 and 11 are invalid requests because the Complainant fails to adequately identify the content and/or subject of the requested e-mails pursuant to Elcavage, *supra*. As such, the Custodian has not unlawfully denied access to the requested e-mails and the GRC will not address the Custodian Counsel’s claim of attorney-client privilege to said e-mails.

Request Item No. 8

In request item no. 8, the Complainant sought inspection and copying of each of the student discipline reports (screen shots) that were previously provided to the DCR. The Custodian’s Counsel responded to the Complainant indicating that the redacted student discipline reports which Counsel provided to the DCR in February 2006 were included in the materials provided to the Complainant in response to his OPRA request dated December 9, 2012. Counsel stated that said response was both e-mailed and mailed to the Complainant, and that another copy of said records was attached with this instant letter in PDF format. Counsel stated that the reports do not exist in any other format. The Complainant asserts that he is entitled to inspect the records pertaining to his client as well as student “JPD” whose mother gave her consent to release the records.

First, the fact that a parent provided consent for the release of her child’s discipline record does not affect a Custodian’s response to an OPRA request. Under OPRA, a custodian must grant or deny access in accordance with the law. There exists no mechanism under OPRA for a person to override any existing exemption by consenting to the disclosure of a record.

Next, in Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008), the Appellate Division held that a complainant could not have been denied

access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. *Id.* at 617. The Appellate Division noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. *Id.* (citations omitted).

The Appellate Division's decision in Bart, however, turns upon the specific facts of that case. In the adjudication of the Denial of Access Complaint, the Council's decision noted the certification of the custodian that copies of the requested record were available at the Housing Authority's front desk upon simple verbal request by any member of the public; moreover, the complainant admitted that he was actually in possession of this record at the time of the OPRA request for the same record. Bart v. City of Paterson Housing Authority, GRC Complaint No. 2005-145 (May 2006).

In this instant matter, the Custodian's Counsel stated that he has previously provided the the redacted student discipline reports to the Complainant in response to his OPRA request dated December 9, 2012. Counsel stated that said response was both e-mailed and mailed to the Complainant, and that another copy of said records was attached to his response to the OPRA request subject of this complaint. More importantly, in the Complainant's December 14, 2012 OPRA request, the Complainant attaches "Exhibit 2" which is a letter from the Custodian's Counsel to the Complainant dated March 27, 2012 in response to the Complainant's previous OPRA request dated March 19, 2012, which is not at issue in this complaint. The Complainant provides a visual indicator on said letter calling attention to the sixth paragraph which reads:

"[e]nclosed is a CD-ROM (attached via email to the emailed version of this letter) with a pdf file consisting of the redacted screen shots that were filed in support of our Motion for Summary Judgment in the 'John Doe' matter in 2008. The redactions were made by printing the original images to paper and redacting them by hand, then scanning them to pdf format and making additional redactions electronically. Any "hash marks" or metadata relating to the pdf of the redacted images may be found within the attached pdf file on the enclosed CD-ROM. The original images were provided to me as 'GIF' images which contain no 'hash marks' or metadata beyond the date of their creation, which ranged from January 28, 2008 through January 31, 2008 for all GIF images provided. Because I am unable to provide the GIF images to you in native format with the names and other personal identifiers of minor students redacted, FERPA prohibits their production. In any event, there exists no version of these screen shot images with any metadata beyond the dates on which they were created in January 2008."

Additionally, in the Complainant's December 14, 2012 OPRA request, the Complainant attaches "Exhibit 3" which is a letter from the Custodian's Counsel to the Complainant dated December 1, 2012 in response to the Complainant's previous OPRA request dated November 29, 2012, which is not at issue in this complaint. Paragraph one of said letter reads:

“[t]he redacted discipline reports provided to the Division on Civil Rights were provided to you in response to several prior OPRA requests, including your OPRA request of November 27, 2012. These records do not exist in paper format in my office. The unredacted originals were provided to my office, redacted, scanned and saved as PDF files. Your request for ‘on-site inspection’ is denied as beyond the PDF files and printed copies that have been provided to you, there exists nothing further to inspect.”

Thus, based on the letters dated March 27, 2012 and December 1, 2012, which the Complainant attached to his OPRA request, which is the subject of this denial of access complaint, and the Custodian Counsel’s certification, the evidence of record provides that at the time of the Complainant’s December 14, 2012 OPRA request, the Complainant was in possession of both hard copies and electronic copies of the records responsive to request item no. 8.

In Wolosky v. Township of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012), an appeal of Wolosky v. Township of Sparta, GRC Complaint No. 2008-277 (November 2011), the court held that the GRC erred by ordering the Township to provide the complainant with the requested audio recording in a specific WAV format. In said complaint, the Township did not maintain the audio recording in WAV format and instead offered to provide the complainant with a free download of the software needed to play the audio recording in the FTR Gold System format. The court specifically held that:

“[a]lthough the Custodian did not offer to provide Wolosky the recordings in the medium he requested, the Custodian nevertheless offered to provide him with the requested information in a ‘meaningful medium.’ The offered download of the software needed to play audio recordings in the [FTR] Gold System format was ‘meaningful’ because it afforded Wolosky *full access to the requested information.*” (Emphasis added).

Although the scenario in the Wolosky complaint is different than in the instant complaint, the court’s holding is applicable. In the instant complaint, the Complainant was already in possession of both hard copies and electronic copies of the requested discipline reports. Thus, pursuant to Wolosky, *supra*, the Complainant had already been provided “full access” to the requested records.

Therefore, the Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant’s December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart, *supra*. See also Wolosky, *supra*. Nevertheless, the Custodian’s Counsel did provide the Complainant copies of the discipline reports in response to the December 14, 2012 OPRA request, but not on-site inspection.

Request Item No. 9

In request item no. 9, the Complainant sought the metadata and hash marks relating to each of the student discipline reports (screen shots) that were previously provided to the DCR. The Custodian's Counsel responded to the Complainant's request indicating that to the extent the redacted discipline reports bear metadata and/or hash marks, such would be discernible from the attached PDF file containing them.

Based on the evidence of record, there are contested facts regarding the existence and availability of the requested metadata and hash marks. The Custodian's Counsel claims that any existing metadata is available in the PDF records provided to the Complainant. The Complainant asserts that Counsel's statement that metadata and hash marks are available from the PDF documents previously provided is inaccurate. Additionally, the Complainant submitted two (2) "expert reports" from computer companies to show that the extraction of metadata will not disclose personal identifying information about any of the students.

Therefore, similar to the Council's decisions in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-91 (January 2013) and Owoh (on behalf of Delores Nicole Simmons) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-130 (January 2013), the Council should refer this matter to the Office of Administrative Law ("OAL") for a hearing to resolve the facts for the following reasons:

1. There are contested facts regarding whether the PDF records provided to the Complainant by the Custodian's Counsel contained the requested metadata.
2. There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
3. The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the Complainant's request item nos. 1, 2, 3 and 12 because said request items do not seek "government records" as defined in N.J.S.A. 47:1A-1.1 and thus the request items are invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

2. The Complainant's request item nos. 4, 5, 6, 7, 10 and 11 are invalid requests because the Complainant fails to adequately identify the content and/or subject of the requested e-mails pursuant to Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 8, 2010). As such, the Custodian has not unlawfully denied access to the requested e-mails and the GRC will not address the Custodian Counsel's claim of attorney-client privilege to said e-mails.
3. The Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant's December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). *See also* Wolosky v. Township of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012). Nevertheless, the Custodian's Counsel did provide the Complainant copies of the discipline reports in response to the December 14, 2012 OPRA request, but not on-site inspection.
4. Similar to the Council's decisions in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-91 (January 2013) and Owoh (on behalf of Delores Nicole Simmons) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-130 (January 2013), the Council should refer this matter to the Office of Administrative Law ("OAL") for a hearing to resolve the facts for the following reasons:
 - a) There are contested facts regarding whether the PDF records provided to the Complainant by the Custodian's Counsel contained the requested metadata.
 - b) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
 - c) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.

Prepared By: Dara L. Barry
Communications Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

February 19, 2013