



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

September 30, 2014 Government Records Council Meeting

Sabino Valdes
Complainant
v.
Union City Board of Education
(Hudson)
Custodian of Record

Complaint Nos. 2013-147, 2013-201, 2013-298 and
2013-301

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 2014 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:

1. The Denial of Access Complaints, or portions therein, filed by the Complainant based on his October 11, 2012, April 22, 2013, September 18, 2013 Item No. 2, October 1, 2013 Item No. 2 OPRA requests should be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7(e). See also N.J.S.A. 2A:15-59.1(b)(2).
2. The Custodian has borne his burden of proving that he did not unlawfully deny access to the records sought in the Complainant’s September 20, 2012, October 15, 2012, October 23, 2012, March 28, 2013, April 2, 2013, September 18, 2013 Item No. 1, and October 1, 2013 Item No. 1 OPRA requests because he certified that such records could not be located or, in the alternative, all responsive records have been provided, and the Complainant submitted no competent, credible evidence to refute these certifications. See N.J.S.A. 47:1A-6; Kohn v. Township of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005); Kozar v. Woodbridge Township Municipal Clerk’s Office, GRC Complaint No. 2004-54 (August 2004).

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 September, 2014

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: October 3, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 30, 2014 Council Meeting**

**Sabino Valdes¹
Complainant**

**GRC Complaint Nos. 2013-147,
2013-201, 2013-298 & 2013-301**

v.

**Union City Board of Education (Hudson)²
Custodial Agency**

Records Relevant to Complaint:

September 20, 2012 OPRA request: Onsite inspections of the original tenure charge documents prepared by the Union City Board of Education's ("UCBOE") attorney for charges filed against the Complainant on August 2, 2000 and considered by the UCBOE on September 13, 2000.³

October 11, 2012 OPRA requests:⁴

1. Onsite inspection of the motion made and carried by the UCBOE to approve the July 1, 2003 open and closed session minutes included in the minutes made for meetings held by the UCBOE from May 2004 to March 2011.

2. Onsite inspection of the motion made and carried by the UCBOE to approve the October 30, 2003 open, closed and caucus session minutes included in the minutes made for meetings held by the UCBOE from May 2004 to March 2011.

October 15, 2012 OPRA request: Onsite inspection of the July 1, 2003 closed session minutes.⁵

October 23, 2012 OPRA request: Hard copy of the Publisher's Affidavit confirming the publication of the July 1, 2003 minutes.⁶

September 18, 2013 OPRA requests:⁷

1. Copy of the approved Meeting Minutes prepared for a Special Meeting and Executive Session Meeting held by the UCBOE on June 13, 2000.

¹ No legal representation listed on record.

² Represented by Susanne Lavelle, Esq. (Union City, NJ).

³ This request is the subject of GRC Complaint No. 2013-147.

⁴ These requests are the subject of GRC Complaint No. 2013-201.

⁵ This request is the subject of GRC Complaint No. 2013-201.

⁶ This request is the subject of GRC Complaint No. 2013-201.

⁷ These requests are the subject of GRC Complaint No. 2013-298.

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2. Copy of the information which confirms the approvals of the Meeting Minutes prepared for a Special Meeting and Executive Session Meeting held by the UCBOE on June 13, 2000.

October 1, 2013 OPRA Requests:⁸

1. Copy of the Approved Meeting Minutes prepared for a Special meeting and Executive Session meeting held by the UCBOE on July 1, 2003.
2. Copy of the information which confirms the approvals of the Meeting Minutes prepared for a Special Meeting and Executive Session Meeting held by the UCBOE on July 1, 2003.

March 28, 2013 OPRA request: Copy of Rice Notice sent to the Complainant in August 2000, advising that the UCBOE would discuss tenure charges filed against the Complainant at its August 24, 2000 closed session.⁹

April 2, 2013 OPRA request: Copy of Rice Notice sent to the Complainant in March 2001, advising that the UCBOE would discuss tenure charges filed against the Complainant at its March 29, 2001 closed session.¹⁰

April 22, 2013 OPRA request: Copy of any motion made and passed by the UCBOE pursuant to or in connection with the approval of the UCBOE's June 13, 2000 special meeting minutes.¹¹

Custodian of Record: Anthony Dragona

Request Received by Custodian: GRC 2013-147: September 20, 2012; March 28, 2013; April 3, 2013; April 22, 2013; GRC 2013-201: October 11, 2012; October 15, 2012; October 23, 2012; GRC 2013-298: September 18, 2013; GRC 2013-301: October 1, 2013.

Response Made by Custodian: GRC 2013-147: September 24, 2012; April 10, 2013; April 11, 2012; April 30, 2013; GRC 2013-201: October 18, 2012; GRC 2013-298: September 26, 2013; GRC 2013-301: October 9, 2013.

GRC Complaint Received: GRC 2013-147: May 21, 2013; GRC 2013-201: July 10, 2013; GRC 2013-298: October 9, 2013; GRC 2013-301: October 15, 2013.

⁸ These requests are the subject of GRC Complaint No. 2013-301.

⁹ This request is the subject of GRC Complaint No. 2013-147.

¹⁰ This request is the subject of GRC Complaint No. 2013-147.

¹¹ This request is the subject of GRC Complaint No. 2013-147.

Background¹²

Request and Response:

GRC 2013-147:

September 20, 2012 OPRA request:

On September 20, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 24, 2012, the second (2nd) business day after receipt of said request, the Custodian responded in writing seeking an extension of time until October 15, 2012.¹³ On October 5, 2012, the Custodian responded denying access to the request because the original document could not be located.

March 28, 2013 OPRA request:

On March 28, 2013, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On April 10, 2013, the sixth (6th) business day after receipt of the request, the Custodian responded in writing denying access to the request because the responsive record could not be located.

April 2, 2013 OPRA request:

On April 2, 2013, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On April 11, 2013, the sixth (6th) business day after receipt of said request, the Custodian responded in writing denying access to the request because the responsive record could not be located.

April 22, 2013 OPRA request:

On April 22, 2013, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On April 30, 2013, the sixth (6th) business day after receipt of said request, the Custodian responded in writing denying access to the request by stating that a custodian is not required to search through ten (10) plus years of minutes for the requested motion.

¹² 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.

¹³ The Custodian sought said extension because the Complainant submitted 31 additional OPRA requests from September 17, 2012 through September 21, 2012.

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GRC 2013-201:

October 11, 2012 OPRA requests:

On October 11, 2012, the Complainant submitted two (2) OPRA requests to the Custodian seeking the above-mentioned records. On October 18, 2012, the fifth (5th) business day after receipt of said requests, the Custodian responded in writing seeking an extension of time until November 16, 2012. On November 7, 2012, the Custodian again responded seeking an extension of time until November 30, 2012, due to the UCBOE's closure during Hurricane Sandy from October 29, 2012 to November 6, 2012. On November 20, 2012, the Custodian responded denying access to the Complainant's OPRA requests by stating that the Custodian is not required to search through seven (7) years of minutes to locate the requested motion.

October 15, 2012 OPRA request:

On October 15, 2012, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On October 18, 2012, the third (3rd) business day after receipt of said request, the Custodian responded in writing seeking an extension of time until November 16, 2012. On November 7, 2012, the Custodian again responded seeking an extension of time until November 30, 2012, due to the UCBOE's closure during Hurricane Sandy. On November 20, 2012, the Custodian responded denying access to the Complainant's OPRA request because no executive session minutes could be located.

October 23, 2012 OPRA request:

On October 23, 2012, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On November 7, 2012, four (4) business days later, the Custodian again responded seeking an extension of time until November 30, 2012, due to the UCBOE's closure during Hurricane Sandy. On November 20, 2012, the Custodian responded denying access to the Complainant's OPRA request because the responsive record is no longer in the UCBOE's possession.

GRC 2013-298:

September 18, 2013 OPRA request:

On September 18, 2013, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On September 26, 2013, six (6) business days later, the Custodian provided the Complainant with what he believed to be the approved June 13, 2000 special and executive session meeting minutes, but denied his request for information which confirms approval of said minutes for being insufficiently specific.

GRC 2013-301:

October 1, 2013 OPRA request:

On October 1, 2013, the Complainant submitted an OPRA request to the Custodian seeking the above mentioned records. On October 9, 2013, six (6) business days later, the Custodian provided the Complainant with what he believed to be the approved July 1, 2003 special session meeting minutes. The Custodian denied the request for the July 1, 2003 executive session meeting minutes because said minutes could not be located; additionally, the Custodian denied the request for information which confirms approval of said minutes for being insufficiently specific.

Denial of Access Complaint:

GRC 2013-147:

On May 21, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).

September 20, 2012 OPRA request:

The Complainant contends that he previously proved through a “flow of OPRA requests” that minutes the Custodian certified he could not locate in fact existed after the Custodian found the records. *Citing Rivera v. Union City Bd. of Educ. (Hudson)*, GRC Complaint No. 2008-112 (Interim Order dated August 11, 2009). The Complainant argues that OPRA does not include an exemption for failure to locate a responsive record. The Complainant advances that if the Council upholds the Custodian’s denial of access, it will allow the Custodian to continue to cover-up the existence or non-existence of records. The Complainant asserts that the Custodian must submit a legal certification affirming the existence or non-existence of the original tenure charges.

March 28, 2013 & April 2, 2013 OPRA requests:

The Complainant states that a complaint pending before the GRC (*Valdes v. Union City Board of Education (Hudson)*, GRC Complaint No. 2013-63 (April, 2013))¹⁴ is challenging the Custodian’s disclosure of a letter that was not responsive to the Complainant’s request for “advance written notice” of the August 24, 2000 meeting at which his tenure charges were to be discussed.

The Complainant argues that this complaint is relevant here because the Custodian is now arguing that no Rice notice could be located even though he certified in *Valdes* GRC 2013-63 that the letter provided there was responsive to the Complainant’s request for “advance notice.”

¹⁴ The Council administratively disposed of this complaint at its April 30, 2013 meeting because all responsive records were provided.

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The Complainant again contends that if the Council upholds the Custodian's denial of access, it will allow the Custodian to continue to cover-up the existence or non-existence of records.

April 22, 2013 OPRA request:

The Complainant states that he previously filed a complaint regarding a request for minutes containing the approval of June 13, 2000 special meeting minutes, and that the Council determined that such a request was invalid. *See Valdes v. Union City Bd. of Educ. (Hudson)*, GRC Complaint No. 2011-147, 2011-157, 2011-172 & 2011-181 (July 2012). The Complainant argues that the Council's findings were erroneous when compared to the Appellate Division's decision in *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546 (App. Div. 2005) and *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005). The Complainant argues that his requests there and, now, here do not seek general information like the requests in *MAG*, and *Bent*, but, instead, that his requests are similar to that in *Perilli v. Borough of South Bound Brook*, GRC Complaint No. 2006-180 (September 2007) seeking "resolution" and/or "authorizations" in connection with a "Workable Relocation Assistance Plan." The Complainant asserts that the Custodian is merely required to review minutes after the date of the two (2) meetings in order to locate those minutes containing the approval.

The Complainant argues that the Custodian has also developed a scheme of falsely asserting that a request fails to include enough specificity to identify a government record. The Complainant states that it is unreasonable to expect a requestor to know the exact date of the minutes that might contain the responsive approval; thus, he contends that he fashioned his requests in accordance with *Valdes*, GRC 2011-147 by including dates within which the minutes might fall. Further, the Complainant argues that there is no guarantee that the Custodian will have to look through all ten (10) years of minutes.

The Complainant requests that the Council 1) provide a certification affirming the existence or non-existence of the original tenure charges and Rice notice; 2) order the Custodian to continue to search for the minutes including the motion to approve the June 13, 2000 special meeting minutes; and 3) determine that the Custodian knowingly and willfully violated OPRA.¹⁵

GRC 2013-201

On July 10, 2013, the Complainant filed a Denial of Access Complaint with the GRC.¹⁶ The Complainant indicates that he has previously filed *Valdes v. Union City Bd. of Educ. (Hudson)*, GRC Complaint No. 2010-289 (June 2012) with the GRC regarding some of the records at issue in this complaint.

¹⁵ The Complainant submitted an amended Denial of Access Complaint on June 14, 2013. The GRC reviewed same and determined that no new evidence or information was submitted as part of the amended complaint.

¹⁶ The Complainant included extensive background information spanning over 12 years to include legal actions and GRC complaints filed against the UCBOE. The Complainant further advanced several issues that are not within the GRC's purview to adjudicate. *N.J.S.A.* 47:1A-7(b).

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October 11, 2012 OPRA requests:

The Complainant states that he previously filed a complaint regarding a request for minutes containing the approval for the July 1, 2003 and October 30, 2003 minutes, and that the Council determined that same were invalid. See Valdes, GRC 2011-147 *et seq.* The Complainant reiterates that the Council's decision was erroneous when compared to MAG and Bent, and advances that his requests were similar to that in Perilli. The Complainant also contends that the Custodian is merely required to review minutes after the date of the two (2) meetings in order to locate those minutes containing the approval.

The Complainant additionally asserts that it is unreasonable to expect a requestor to know the exact date of the minutes that might contain the responsive approval and notes that his requests include dates within which the minutes might fall. The Complainant states that the Custodian previously complied with a request seeking an "Authorization for Records Disposal" form of a July 1, 2003 meeting recording and hypothesizes that this was either because the matter was fresh in the Custodian's mind or because he searched through eight (8) years of disposal approvals to locate same.

October 15, 2012 OPRA request:

The Complainant argues that he has already proved through a "flow of OPRA requests" that minutes the Custodian could not locate did in fact exist. *Citing* Rivera, GRC 2008-112. The Complainant contends that the Council has issued previous misleading decisions relieving the Custodian of his duty to search any further for meeting minutes that include the July 1, 2003 closed session minutes. *Citing* Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2010-218 (March 2012); Valdes, GRC 2010-289. The Complainant claims that OPRA allows custodians to seek extensions of time but does not include an exemption for a failure to locate a responsive record. The Complainant asserts that based on Rivera, GRC 2008-112 and his subsequent requests, the Council should instruct the Custodian to continue searching for the July 1, 2003 closed session minutes.

October 23, 2012 OPRA request:

The Complainant contends that in response to a previous OPRA request, the Custodian responded advising that no authorization to destroy the Publisher's Affidavit for the July 1, 2003 meeting existed. The Complainant asserts that the Custodian responded to the request at issue here stating that the UCBOE does not possess same, notwithstanding any evidence that the record was destroyed. The Complainant asserts that the Custodian now has a legal obligation to certify to whether the record was destroyed and provide adequate evidence to support same.

Additionally, the Complainant contends that all evidence presented proves that the Custodian's actions have been knowing and willful. The Complainant notes that the GRC has used judicial notice of previous complaints, actions and history in determining that a complaint was frivolous. *Citing* Caggiano v. Sussex Cnty. Prosecutor's Office, GRC Complaint No. 2010-211 (October 2010). The Complainant questions whether the GRC will take judicial notice of the full history of the Complainant's interactions with the UCBOE and Custodian as it did in

Caggiano, GRC 2010-211 and determine that the Custodian knowingly and willfully violated OPRA or, in the alternative, if the GRC will reach an illogical conclusion that protects the Custodian.¹⁷

GRC 2013-298:

On October 9, 2013, the Complainant filed a Denial of Access Complaint with the GRC.¹⁸ The Complainant indicates that he has previously filed Valdes, GRC 2011-147 *et seq.* and Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2012-329 (August 2013) with the GRC regarding some of the records at issue in this complaint.

September 18, 2013 OPRA request:

The Complainant first takes issue with the Custodian's response providing "what [he] believe[s] to be the approved June 13, 2000 Special Meeting Minutes and Executive Session Meeting Minutes[.]" stating that the Custodian may not disclose these records based only on the belief that each was approved. The Complainant argues that the Custodian has been avoiding disclosing the requested records since 2008, and he cites as proof his previous requests for the June 13, 2000 special and executive session meeting minutes on January 2, 2008, February 7, 2008, February 19, 2008, March 25, 2008, August 4, 2008, March 29, 2009, and October 6, 2010, in addition to the related request at issue in Rivera, GRC 2008-112. The Complainant states that even though by October, 2010 the Custodian had located and provided to him copies of the June 13, 2000 special and executive session meeting minutes, he still had nothing to confirm the UCBOE's approval of same.

Further, the Complainant again advances that the Council incorrectly applied MAG, Bent, and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) when upholding the denial of his request for minutes that included a motion to approve the June 13, 2000 Special Meeting Minutes in Valdes, GRC 2011-147 *et seq.* The Complainant argues that the Custodian is required to locate information which confirms the approval of the June 13, 2000 minutes. The Complainant contends that the requested information is identifiable because the Custodian searched through six (6) months of meeting minutes in response to the request at issue in Valdes, GRC 2012-329. The Custodial also acknowledges that "aside from the search conducted by the [UCBOE] through six months of minutes, the [UCBOE] has no way of determining the extent of the search needed to locate said information."¹⁹

¹⁷ The Complainant submitted an amended Denial of Access Complaint on July 8, 2013. The Council reviewed same and determined that no new evidence or information was submitted as part of the amended complaint.

¹⁸ The Complainant included extensive background information spanning over 12 years to include legal actions and GRC complaints filed against the UCBOE. The Complainant further advanced several issues that are not within the GRC's purview to adjudicate. N.J.S.A. 47:1A-7(b).

¹⁹ The Complainant submitted an amended Denial of Access Complaint on November 4, 2013. The Council reviewed same and determined that no new evidence or information was submitted as part of the amended complaint.

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GRC 2013-301:

On October 15, 2013, the Complainant filed a Denial of Access Complaint with the GRC.²⁰ The Complainant indicates that he has previously filed Valdes v. Union City Board of Education, GRC Complaint No. 2011-181 (July 2012) with the GRC regarding some of the records at issue in this complaint.

October 1, 2013 OPRA request:

The Complainant takes issue with the Custodian's response providing "what [he] believe[s] to be the approved July 1, 2003 Special Meeting Minutes[.]" stating that the Custodian may not disclose these records based only on the belief that each was approved. The Complainant argues that the Custodian has been avoiding disclosing the requested records since 2008, and he cites as proof his previous requests for the July 1, 2003 special session meeting minutes on January 2, 2008, January 15, 2008, February 19, 2008, March 25, 2008, and August 4, 2008 in addition to the related request at issue in Rivera, GRC 2008-112.

Further, the Complainant again advances that the Council incorrectly applied MAG, Bent, and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) when upholding the denial of his request for minutes that included a motion to approve the July 1, 2003 Special Meeting Minutes in Valdes, GRC 2011-147 *et seq.* The Complainant argues that the Custodian is required to locate information which confirms the approval of the July 1, 2003 minutes. The Complainant contends that the requested information is identifiable because the Custodian searched through nine (9) months of meeting minutes in response to a similar previous OPRA request. The Custodial again also acknowledges that "aside from the search conducted by the [UCBOE] through nine months of minutes, the [UCBOE] has not way of determining the extent of the search needed to locate said information."²¹

Statement of Information:

GRC 2013-147:

On June 13, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the Complainant's OPRA requests on September 20, 2012, March 28, 2013, April 2, 2013, and April 22, 2013. The Custodian's responses are as follows:

²⁰ The Complainant included extensive background information spanning over 12 years to include legal actions and GRC complaints filed against the UCBOE. The Complainant further advanced several issues that are not within the GRC's purview to adjudicate. N.J.S.A. 47:1A-7(b).

²¹ The Complainant submitted an amended Denial of Access Complaint on November 7, 2013. The Council reviewed same and determined that no new evidence or information was submitted as part of the amended complaint.

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September 20, 2012 OPRA request:

The Custodian certifies that he responded in writing on October 5, 2012 after requesting an extension of time. The Custodian also certifies that the Complainant has requested this record on six (6) previous occasions. The Custodian states that over the course of these requests, the Complainant conducted numerous on-site inspections of the relevant files and located one (1) date-stamped copy of the August tenure charges and one (1) non-date-stamped copy. The Custodian affirmed that upon receipt of this request, the Counsel for the Custodian (“Counsel”) sent a paralegal, with a copy of the tenure charges previously located, to search the twenty-seven (27) boxes of files relevant to the Complainant that are in storage. The Custodian certified that after reviewing the records for four hours, no original document was found.

March 28, 2013 & April 2, 2013 OPRA requests:

The Custodian certifies that he responded in writing on April 10, 2013 and April 11, 2013. The Custodian also certifies that in connection with a previous request seeking the same responsive documents, which became the subject of Valdes, GRC 2013-63, a paralegal searched for five and a half (5 ½) hours through records in storage and ultimately located one (1) record that the Complainant said was not responsive. The Custodian states that no other records were located during the paralegal’s search.

April 22, 2013 OPRA request:

The Custodian certifies that he received the Complainant’s OPRA request on April 22, 2013 and responded in writing on April 30, 2013.

The Custodian states that Counsel reviewed the request and determined that same should be denied because the Custodian is not required to search through ten (10) years of records in an attempt to locate an undated motion. The Custodian notes that the Complainant previously submitted an OPRA request, although worded differently, for the same information that became the subject of Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2012-329 (August 2013).²²

GRC 2013-201:

On August 9, 2013, the Custodian filed an SOI.²³ The Custodian certifies that he received the Complainant’s OPRA requests on October 11, 2012, October 15, 2012 and October 23, 2012. The Custodian’s responses are as follows:

October 11, 2012 OPRA requests:

The Custodian certifies that, after seeking extensions of time to respond, Counsel informed the Complainant in writing on November 20, 2013 that the Custodian was not required

²² At the time of the SOI, Valdes, GRC 2012-329 was still undergoing adjudication.

²³ The Custodian also addresses several of the issues raised by the Complainant in the Denial of Access Complaint that are not within the GRC’s purview to adjudicate. N.J.S.A. 47:1A-7(b).

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to search through seven (7) years of minutes in order to locate the motion and disclose same for inspection. The Custodian states that these requests were worded differently but are similar in nature to that at issue in Valdes, GRC 2012-329.

The Custodian also contends that the Complainant's OPRA requests are invalid because they failed to sufficiently identify the specific record sought. *Citing* MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at, 37; N.J. Builder's Ass'n, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Valdes, GRC 2011-147 *et seq.*

October 15, 2012 OPRA request:

The Custodian certifies that access to the responsive record was denied in writing on November 20, 2012, after extensions of time had been sought, because the UCBOE could not locate same.

The Custodian further certifies that his administrative assistant spent an hour searching for the July 1, 2003 closed session minutes, notwithstanding that she previously conducted a search for same in response to previous OPRA requests. The Custodian states that she was unable to locate the responsive records after reviewing the various ledger books the minutes were kept in.

October 23, 2012 OPRA request:

The Custodian certifies that access to the responsive record was denied in writing on November 20, 2012, after extensions of time had been sought, because the record is no longer in the UCBOE's possession. The Custodian attached an authorization showing that purchase orders for the relevant time period were authorized for destruction on July 27, 2011.

The Custodian certifies that, knowing that the type of affidavits requested are attached to purchase orders, his administrative assistant expended an hour looking for purchase orders in storage. The Custodian certifies that after she did not locate them, she reviewed old Requests for Authorization for Records Disposal and located one for the purchase orders for that period that indicated the relevant purchase order had been destroyed on December 16, 2011.

GRC 2013-298:

On October 18, 2013, the Custodian filed an SOI.²⁴ The Custodian certifies that he received the Complainant's OPRA request on September 18, 2013. The Custodian's response is as follows:

²⁴ The Custodian also addresses several of the issues raised by the Complainant in the Denial of Access Complaint that are not within the GRC's purview to adjudicate. N.J.S.A. 47:1A-7(b).
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September 18, 2013 OPRA request:

The Custodian certifies that he responded on September 26, 2013 by providing what he believed to be the requested June 13, 2000 meeting minutes but denying the request for the information which confirms the approval of said minutes. The Custodian argues that the UCBOE has lived up to the purposes of OPRA by making the requested June 13, 2000 meeting minutes that are in its possession available to the Complainant. Additionally, the Custodian states that there is no requirement that meeting minutes be approved.

Further, the Custodian contends that the Complainant's request for information which confirms the approval of said minutes is one that requires research and is overly broad. The Custodian notes that the June 13, 2000 meeting minutes have been made available to the Complainant, but that the "information or motion approving those [m]inutes" need not be provided. *Citing* MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at, 37; N.J. Builder's Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Donato, GRC 2005-182; Valdes, GRC 2011-147 *et seq.*

GRC 2013-301:

On November 4, 2013, the Custodian filed an SOI.²⁵ The Custodian certifies that he received the Complainant's OPRA request on October 1, 2013. The Custodian's response is as follows:

October 1, 2013 OPRA request:

The Custodian certifies that he responded on October 9, 2013 by providing what he believed to be the requested July 1, 2003 special meeting minutes but denying access both to the July 1, 2003 executive session meeting minutes and to the information which confirms approval of both types of July 1, 2003 meeting minutes. The Custodian notes that the arguments advanced by the Complainant here are nearly identical to those he presented in Valdes, GRC 2013-298, save for the different meeting date of the requested minutes. As such, the Custodian reiterates that the UCBOE has lived up to the purposes of OPRA by making the requested July 1, 2003 meeting minutes that are in its possession available to the Complainant. Additionally, the Custodian states that there is no requirement that meeting minutes be approved.

The Custodian contends that the UCBOE has made a continued good faith effort to comply with the Complainant's OPRA requests. Additionally, the Custodian notes that he has been candid regarding the fact that, though he believes that a July 1, 2003 Executive Session meeting took place, he has been unable to locate the corresponding meeting minutes.

Further, the Custodian again contends that the Complainant's request for information which confirms the approval of said minutes is one that requires research and is overly broad. *Citing* MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at, 37; N.J. Builder's Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Donato, GRC 2005-182; Valdes, GRC 2011-147 *et seq.*

²⁵ The Custodian also addresses several of the issues raised by the Complainant in the Denial of Access Complaint that are not within the GRC's purview to adjudicate. N.J.S.A. 47:1A-7(b).
Sabino Valdes v. Union City Board of Education, GRC Complaint Nos. 2013-147, -201, -298 & -301 – Findings and Recommendations of the Executive Director

Analysis

Frivolousness of Certain Complaints

OPRA provides that:

If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. *The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis.* If the council shall conclude that the complaint is outside its jurisdiction, frivolous, or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed.

N.J.S.A. 47:1A-7(e) (emphasis added).

OPRA does not define what constitutes a frivolous complaint. The Council has previously turned to the language of New Jersey's Frivolous Litigation Act when considering whether, and eventually determining that, an individual had filed frivolous complaints under OPRA. See Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20, 2007-21, 2007-22 & 2007-23 (September 2007); Caggiano, GRC 2010-211. That statute states, in pertinent part, that:

In order to find that a complaint . . . was frivolous, the judge shall find on the basis of the pleadings, discovery or evidence presented that . . . [t]he nonprevailing party knew, or should have known, that the complaint . . . was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

N.J.S.A. 2A:15-59.1(b)(2).

Identical language has also been adopted by other New Jersey administrative bodies. See, e.g., N.J.A.C. 6A:28-1.2 (defining State Ethics Commission's standard for frivolous complaints).

Here, the Complainant's October 11, 2012, April 22, 2013, September 18, 2013 Item No. 2, October 1, 2013 Item No. 2 OPRA requests all seek "information" or the "motion" approving the UCBOE's meeting minutes from a particular date and session. The Council has previously considered five (5) nearly identical requests made by the Complainant and, in each case, determined that such requests are invalid owing to their insufficient specificity and requirement that the Custodian to perform research. See, Valdes, GRC 2012-329; Valdes, GRC 2011-147, 2011-157, 2011-172 & 2011-181.

The Council's first decision finding four (4) of these requests for motions approving minutes to be invalid occurred at its July 31, 2012 meeting and was transmitted to the Complainant soon after. See Valdes, GRC 2011-147 *et seq.* The Complainant, in turn, made the

first of the five (5) requests relevant to the instant complaints on October 11, 2012, over two (2) months after the Council's decision in Valdes, GRC 2011-147 *et seq.* Further, three (3) of the requests at issue here were made after the Council again upheld the denial of the Complainant's request for a motion approving minutes in Valdes, GRC 2012-329.

Thus, the evidence of record shows that the Complainant knew, or should have known, that the complaints filed based on his October 11, 2012, April 22, 2013, September 18, 2013 Item No. 2, October 1, 2013 Item No. 2 requests for "information" or the "motion" approving various UCBOE meeting minutes was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. N.J.S.A. 2A:15-59.1(b)(2). The Council held that each of the Complainant's five (5) previous, nearly identical requests were impermissibly broad, and yet the Complainant continued to phrase the instant requests in the same manner. Further, the Complainant acknowledged the Council's upholding of these earlier denials in the supporting documentation accompanying the instant complaints. While OPRA does not limit the number of times an individual can request a particular record, this does not preclude a given complaint filed with the GRC from being frivolous. *See Caggiano*, GRC 2007-20 *et seq.*

Therefore, the Denial of Access Complaints, or portions therein, filed by the Complainant based on his October 11, 2012, April 22, 2013, September 18, 2013 Item No. 2, October 1, 2013 Item No. 2, and OPRA requests should be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7(e). *See also N.J.S.A.* 2A:15-59.1(b)(2).

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.

The Council has previously found that, in light of a custodian's certification that no records responsive to the request could be located, no unlawful denial of access occurred. *See Pusterhofer v. N.J. Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005); Kozar v. Woodbridge Twp. Mun. Clerk's Office, GRC Complaint No. 2004-54 (August 2004).

Similarly, the Council has found no unlawful denial of access when a custodian certified that he provided all responsive records to complainant, and there existed no credible evidence in record to refute such certification. *See Kohn v. Twp. of Livingston*, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).

September 20, 2012 OPRA request:

Here, the Custodian certified that no responsive original tenure charge document could be located, despite a search through twenty-seven (27) boxes of records, and that the Complainant has requested this record six (6) times previously.

October 15, 2012 OPRA request:

The Custodian certified here that, as was the case for previous requests for July 1, 2003 closed session minutes, no responsive record could be located.

October 23, 2012 OPRA request:

In this instance, the Custodian certified, and the record shows, that the requested documents are no longer in the UCBOE's possession because the relevant purchase orders and affidavits were authorized for destruction on July 27, 2011, and destroyed on December 16, 2011.

March 28, 2013 & April 2, 2013 OPRA requests:

Regarding these requests, the Custodian certified that, aside from the record rejected by the Complainant in Valdes, GRC 2013-63, no responsive records could be located.

September 18, 2013 Item No. 1 OPRA request:

Here, the Custodian certified that he provided all copies of the June 13, 2000 special and executive session meeting minutes in the UCBOE's possession to the Complainant.

October 1, 2013 Item No. 1 OPRA request:

The Custodian certified here that he provided the Complainant with the copy of the July 1, 2003 special session meeting minutes, but could not locate the July 1, 2003 executive session meeting minutes. As the Complainant noted, he already requested the July 1, 2003 executive session meeting minutes in Valdes, GRC 2010-289, wherein the Council found no unlawful denial of access because the Custodian certified that such minutes could not be located.

Therefore, the Custodian has borne his burden of proving that he did not unlawfully deny access to the records sought in the Complainant's September 20, 2012, October 15, 2012, October 23, 2012, March 28, 2013, April 2, 2013, September 18, 2013 Item No. 1, and October 1, 2013 Item No. 1 OPRA requests because he certified that such records could not be located or, in the alternative, all responsive records have been provided, and the Complainant submitted no competent, credible evidence to refute these certifications. See N.J.S.A. 47:1A-6; Kohn, GRC 2009-203 & 2009-211; Burns, GRC 2005-68; Pusterhofer, GRC 2005-49; Kozar, GRC 2004-54.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Denial of Access Complaints, or portions therein, filed by the Complainant based on his October 11, 2012, April 22, 2013, September 18, 2013 Item No. 2, October 1, 2013 Item No. 2 OPRA requests should be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7(e). *See also* N.J.S.A. 2A:15-59.1(b)(2).

2. The Custodian has borne his burden of proving that he did not unlawfully deny access to the records sought in the Complainant's September 20, 2012, October 15, 2012, October 23, 2012, March 28, 2013, April 2, 2013, September 18, 2013 Item No. 1, and October 1, 2013 Item No. 1 OPRA requests because he certified that such records could not be located or, in the alternative, all responsive records have been provided, and the Complainant submitted no competent, credible evidence to refute these certifications. *See* N.J.S.A. 47:1A-6; Kohn v. Township of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005); Kozar v. Woodbridge Township Municipal Clerk's Office, GRC Complaint No. 2004-54 (August 2004).

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September 23, 2014