



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

**FINAL DECISION**

**October 28, 2014 Government Records Council Meeting**

Jennifer Tomlinson  
Complainant

Complaint No. 2014-104

v.

Beach Haven Board of Education (Ocean)  
Custodian of Record

At the October 28, 2014 public meeting, the Government Records Council (“Council”) considered the October 21, 2014 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 Custodian initially responded and subsequently certified in her Statement of Information that the Beach Haven Board of Education does not possess a copy of the Mr. Raleigh’s resume; thus, no responsive record exists. Complainant conversely argued that the Beach Haven BOE is required by law to retain the requested resume, if the BOE ever received it; however, Complainant provided no evidence to refute the Custodian’s Certification. Because there is no evidence refuting the Custodian’s certification that no responsive record exists, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer v. New Jersey Dept. of Educ.*, GRC Complaint No. 2005-49 (July 2005).

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 28<sup>th</sup> Day of October, 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 30, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 28, 2014 Council Meeting**

**Jennifer Tomlinson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-104**

v.

**Beach Haven Board of Education (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copy via email of resume of Eva Marie Raleigh, Superintendent/Principal of Board of Education, (“BOE”)<sup>3</sup>

**Custodian of Record:** Lillian Brendel

**Request Received by Custodian:** February 11, 2014

**Response Made by Custodian:** February 22, 2014

**GRC Complaint Received:** March 6, 2014

**Background<sup>4</sup>**

**Request and Response:**

On February 11, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned record. On February 22, 2014, eight (8) business days after receipt of the request, the Custodian responded that no records responsive to the request exist.

**Denial of Access Complaint:**

On March 6, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on February 11, 2014, she submitted a request to the Custodian for the resume of Ms. Raleigh. The Complainant argued that, notwithstanding that the BOE is required by law to retain such records, the requested record was not disclosed on the grounds that none exists.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Robert Muccilli, Esq., Capehart & Scratchart (Mount Laurel, NJ).

<sup>3</sup> The Complainant requested additional records which are not the subject matter of this complaint.

<sup>4</sup> 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.

### Statement of Information:

On April 1, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the BOE did not possess the requested record, nor did the BOE receive such record in the course of its official business. The Custodian argued that accordingly, if the resume of Ms. Raleigh exists, it is not a government record and the Custodian has no obligation to disclose it. N.J.S.A. 47:1A-1.1.

### Additional Submissions

On May 9, 2014, the Complainant emailed the GRC, referring to a public statement that the BOE did not “keep any documents supplied to them by the candidates and that the BOE did not “receive” the resume. The Complainant restated that, by law, the BOE is required to retain such records and questioned whether the BOE ever received the resume.

### Analysis

#### 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 consistently found there to be no denial of access when a custodian demonstrates that no records responsive to a complainant’s request exist. In Pusterhofer v. New Jersey Dept. of Educ., GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The custodian responded stating that there was no record of any telephone calls made to the complainant. Id. The custodian subsequently certified that no records responsive to the complainant’s request existed, and the complainant submitted no evidence to refute said certification. Id. The GRC held the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed. Id.

Here, the Custodian initially responded and subsequently certified in her SOI that the Beach Haven BOE does not possess a copy of Mr. Raleigh’s resume; thus, no responsive record exists. Complainant conversely argued that the Beach Haven BOE is required by law to retain the requested resume, if the BOE ever received it; however, Complainant provided no evidence to refute the Custodian’s Certification. Because there is no evidence refuting the Custodian’s certification that no responsive record exists, the Custodian did not unlawfully deny access to the requested records. *See* Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian initially responded and subsequently certified in her Statement of Information that the Beach Haven Board of Education does not possess a copy of the Mr. Raleigh's resume; thus, no responsive record exists. Complainant conversely argued that the Beach Haven BOE is required by law to retain the requested resume, if the BOE ever received it; however, Complainant provided no evidence to refute the Custodian's Certification. Because there is no evidence refuting the Custodian's certification that no responsive record exists, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer v. New Jersey Dept. of Educ., GRC Complaint No. 2005-49 (July 2005).*

Prepared By: Ernest Bongiovanni, Esq.  
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.  
Acting Executive Director

October 21, 2014