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CHARLES A. RICHMAN
Commissioner

FINAL DECISION

July 28, 2015 Government Records Council Meeting

Kathleen Giambri
Complainant

Complaint No. 2014-397

v.

Sterling High School District (Camden)
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 21, 2015 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 Complainant’s request items are invalid because they failed to include adequate identifiers necessary to permit the Custodian to perform a search: OPRa does not require a custodian to conduct research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian lawfully denied access to the Complainant’s request items. N.J.S.A. 47:1A-6.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 28th Day of July, 2015

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: July 30, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 28, 2015 Council Meeting**

**Kathleen Giambri¹
Complainant**

GRC Complaint No. 2014-397

v.

**Sterling High School District (Camden)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. All resignation letters and/or memoranda from staff members received by school administrators from June 1, 2013, through November 5, 2014.
2. All bid specifications, bid responses, quotes, proposals, agendas, committee agendas, resolutions, minutes, purchase orders, invoices, contracts, letters, memoranda, and/or checks or payments made to support Power School Services (“PSS”) from May 1, 2014 through November 5, 2014.³

Custodian of Record: Elizabeth M. Giambrone
Request Received by Custodian: November 10, 2014
Response Made by Custodian: November 18, 2014
GRC Complaint Received: November 25, 2014

Background⁴

Request and Response:

On November 5, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 18, 2014, the sixth (6th) business day after receipt of the OPRA request, the Custodian responded in writing, first noting that the Sterling High School District (“District”) was closed on November 6 and November 7, 2014; thus, this response is timely.

Regarding OPRA request item No. 1, the Custodian stated that no records exist. Further, the Custodian noted that personnel records under OPRA are subject to limited disclosure.

¹ No legal representation listed on record.

² Represented by John B. Comegno II, Esq., and Kyle Allen, Esq., of Comegno Law Group, P.C. (Moorestown, NJ).

³ The Complainant requested additional records that are not at issue in this complaint.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

N.J.S.A. 47:1A-10; Executive Order No. 11 (Governor Byrne, 1974)(“EO 11”). The Custodian also stated that in Kieffer v. High Point Reg’l High Sch., 2010 N.J. Super. Unpub LEXIS 3115 (App. Div. 2010), the Appellate Division affirmed the trial court’s decision that a resignation letter was exempt from disclosure.

Regarding OPRA request item No. 2, the Custodian denied same as overly-broad. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian stated that the item would require research and fails to identify specific records.

Denial of Access Complaint:

On November 25, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).

Regarding the resignation letters, the Complainant argued that at least one (1) individual, Justin Jackson, resigned during the identified time frame; however, the Complainant is aware of other resignations of some South Jersey Technology Partnership (“SJTP”) staff members as well. The Complainant asserted that the resignations were accepted by the District at public meetings. The Complainant contended that the Custodian purposely withheld responsive records to hide Mr. Jackson’s initial resignation letter,⁵ which was mishandled by the District, and those of SJTP staff members.

Regarding the PSS support records, the Complainant argued that the Custodian purposely withheld records because the District failed to bid out for same. The Complainant asserted that she believed that Power Student Information Systems & Joint Solutions (“PSISJS”) received the contract and was actively serving as the District’s support vendor during the specified time frame. The Complainant contended that it should not have been difficult to locate responsive records based on her review of relevant meeting minutes, through which she gleaned that not many other bids, quotes or payments for PSS existed.

Statement of Information:

On December 19, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 10, 2015, because the District was closed on November 6, and November 7, 2014, for the annual New Jersey Education Association’s Convention. The Custodian affirmed that, notwithstanding that resumes are not subject to disclosure and the Complainant’s request items were overly broad, the District conducted a diligent search of its records. The Custodian certified that the District was unable to locate responsive records. The Custodian affirmed that she responded in writing to the Complainant on November 18, 2014, denying access to both items.

The Custodian argued that the Complainant’s OPRA request item No. 1 seeking resignation letters from “staff members received by school administrators” over a seventeen (17) month period was invalid as overly broad. MAG, 375 N.J. Super. at 546; Bent v. Stafford Police

⁵ The Complainant made additional allegations about the District’s handling of Mr. Jackson’s resignation letter that are not within the Council’s authority to adjudicate. N.J.S.A. 47:1A-7(b).

Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian noted that the Denial of Access Complaint focuses on Mr. Jackson; however, she failed to identify any individuals in her OPRA request.⁶ The Custodian argued that the Complainant changed the parameters of her request upon filing of this complaint and did not provide the District a fair opportunity to consider these new parameters.

The Custodian also argued that even if item No. 1 were not invalid, resignation letters are personnel records exempt from disclosure. N.J.S.A. 47:1A-10; EO 11; Kiefer, 2010 N.J. Super. Unpub. LEXIS 3115. The Custodian asserted that resignation letters contain an extraordinary amount of substance and subjectivity that is not subject to access under OPRA. The Custodian argued that an individual's decision to resign from a position is personal and the letter constitutes a tangible form of the personal feelings that led to such a decision.

The Custodian argued that the Complainant's OPRA request item No. 2 is also overly broad. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; LaMantia, GRC 2008-140. The Custodian argued that she would have to conduct extensive research of fourteen (14) different types of records to locate anything referencing PSS. The Custodian contended that the item failed to include any identifying information, such as whether PSS is a company or a service (and what type of service). Additionally, the Custodian asserted that the term "support" did not cure these deficiencies.

The Custodian again argued that the Complainant changed the parameters of her request in the Denial of Access Complaint by identifying PSISJS. The Custodian noted that the Complainant amended this item on November 19, 2014, to seek specific records about PSISJS to which she timely responded by providing records that the Complainant alleged were at issue here. The Custodian contended that, notwithstanding that she submitted an amended OPRA request on November 19, 2014, the Complainant filed this complaint prior to receiving a response from the District.

The Custodian asserted that the Complainant's actions demonstrate her intent to utilize OPRA to harass the District. Specifically, the Custodian contended that this frivolous complaint was filed in bad faith by the Complainant on behalf of Educational Business Services ("EBS"), solely for the purpose to harass the District. *See* Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20 *et seq.* (September 2007). The Custodian asserted that the Complainant began an "ignominious" campaign on October 30, 2014, by filing twenty-six (26) OPRA requests seeking at least 176 items over approximately eighteen (18) business days. The alleged purpose was to harass, annoy, and substantially disrupt the District. The Custodian asserted that it is impossible to calculate the number of responsive records, although she estimated that the number is in the thousands. The Custodian contended that this campaign was the result of a recently concluded investigation into EBS and the Complainant's husband by the New Jersey Department of Education, Office of Fiscal Accountability & Compliance ("OFAC"), which found that he had several conflicts of interest with the Hi-Nella Board of Education, Hi-

⁶ The Custodian also addressed the Complainant's allegations of the District's handling of Mr. Jackson's resignation letter

Nella Township, and South Jersey Technology Partnership (“SJTP”). The Custodian noted that this complaint is one (1) of six (6) filed on the same day.

The Custodian stated that, due to ongoing issues with the Complainant and EBS, the District sought judicial relief in Camden County Superior Court by filing an Order to Show Cause with Temporary Restraints. The Custodian stated that the Honorable Judge Nan S. Famular granted the District’s request for temporary restraints on December 3, 2014, to enjoin EBS from submitting additional OPRA requests and relieve the District of its obligation to complete any outstanding OPRA requests.

Analysis

Validity of Request

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 New Jersey Appellate Division has held that:

While 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.*

MAG, 375 N.J. Super. at 546 (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

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.” *Id.* at 549 (emphasis added). *Bent*, 381 N.J. Super. at 37;⁷ *NJ Builders*, 390 N.J. Super. at 180; *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009).

Regarding request item No. 1, the Complainant sought resignation letters submitted to administrators by unidentified staff members for a seventeen (17) month period. However, the Complainant argued in the Denial of Access Complaint that at least one individual, Mr. Jackson, had submitted a resignation letter during that time frame. The Custodian initially responded, denying access to resignation letters under *N.J.S.A.* 47:1A-10. In the SOI, the Custodian contended that the item was invalid because it would have required her to conduct research in order to respond.

In prior complaints where the Council has been tasked with determining the disclosability of resignation letters, the complainants typically identified a specific individual. See *Kupferman v. Long Hill Twp. Bd. of Educ. (Morris)*, GRC Complaint No. 2007-213 (November 2009); *Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2011-173. In the instant matter, the Custodian would logically have to research her personnel files to determine who resigned over the specified time frame before potentially being in a position to locate responsive records – assuming they even exist. To this end, the GRC is satisfied that OPRA does not require the Custodian to conduct this type of research and that the request item is invalid.

Regarding request item No. 2, the Complainant sought fourteen (14) different types of records over approximately six (6) months that “support[ed]” PSS. However, in the Denial of Access Complaint, the Complainant identified PSISJS as the vendor maintaining a contract for PSS. In both her initial response and SOI, the Custodian contended that this item was overly broad and invalid. The Custodian further noted that the Custodian amended this request item to identify PSISJS on November 19, 2014, but filed this complaint anyway.

In *Carter v. Franklin Fire Dist. No. 2 (Somerset)*, GRC Complaint No. 2012-05 (Final Decision dated June 26, 2012), the Council determined that the complainant’s request seeking purchase orders, vouchers, *etc.*, without vendor names or dates was invalid. In coming to this conclusion, the Council noted that

[T]he Complainant candidly stated that he could neither provide dates nor vendors for the records he requested. Without such information, the only way the Custodian would be able to comply with the Complainant’s request would be to disclose all records of the type requested within the agency’s files. The courts have determined that such an all-encompassing request is not contemplated by OPRA.

Id. at 7.

⁷ Affirming *Bent v. Stafford Police Dep’t*, GRC Case No. 2004-78 (October 2004).

The Council subsequently denied the complainant's request for reconsideration, and he appealed to the Appellate Division. On remand from the Appellate Division, the Council revisited the complainant's request and again determined that same was invalid for substantially matching reasons. Carter, GRC 2012-05 (May 2015).

Based on the evidence of record here, it appears that PSS is a program or system used by the District. Additionally, the evidence supports that PSISJS was contracted to provide this service. However, this evidence would not have come to light had the Complainant not identified PSISJS in the Denial of Access Complaint. Thus, the initial OPRA request included types of records and a time frame but no vendor. The GRC is satisfied that the omission of the vendor in this request item resulted in the request being invalid. As in Carter, the Complainant failed to identify a vendor, thus forcing the Custodian to identify the vendor providing PSS to the District and then attempt to locate fourteen (14) different types of records that might refer to the vendor, or conduct research. As noted above, a custodian is not required to conduct research.

Therefore, the Complainant's request items are invalid because they failed to include adequate identifiers necessary to permit the Custodian to perform a search: OPRA does not require a custodian to conduct research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151. Thus, the Custodian lawfully denied access to the Complainant's request items. N.J.S.A. 47:1A-6.

The GRC declines to address whether this complaint was frivolous and filed with intent to harass the District. Notwithstanding the evidence presented, the District has successfully litigated this issue in Superior Court. Thus, no analysis on this issue is required.

Finally, the GRC notes that, although it is declining to address the disclosability of resignation letters, the issue is likely less clear than argued by the Custodian. Specifically, the GRC required disclosure of resignation letters in Kupferman, GRC 2007-213 (Interim Order dated November 4, 2009) and Verry, GRC 2011-173 (Interim Order dated August 28, 2012). However, the Council conducted an *in camera* review of same to determine whether any information therein was exempt under N.J.S.A. 47:1A-10. The Council reasoned that OPRA required disclosure of certain information contained in the letter and thus allowed for disclosure with redactions. In Kieffer, the Court noted that the Law Division similarly conducted an *in camera* review. Thus, it is possible that resignation letters may be disclosable in part or whole, depending on the nature of the contents of such a letter.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request items are invalid because they failed to include adequate identifiers necessary to permit the Custodian to perform a search: OPRA does not require a custodian to conduct research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian lawfully denied access to the Complainant's request items. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
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Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015