



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**January 31, 2017 Government Records Council Meeting**

Gary Keyser  
Complainant

v.

Morris School District (Morris)  
Custodian of Record

Complaint No. 2015-189

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the January 24, 2017 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 lawfully denied access to Complainant’s June 3, 2015 OPRA request. N.J.S.A. 47:1A-6. The Custodian certified that the responsive record contains information generated by or on behalf of public employees or employers in connection with a grievance filed by the Complainant, and the Complainant does not adequately refute the Custodian’s certification. Therefore, the responsive record is exempt from access under OPRA. N.J.S.A. 47:1A-1.1. *See also* Fischer, II v. NJ Dep’t of Corr., GRC Complaint No. 2005-170 (May 2006).

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 31<sup>st</sup> Day of January, 2017

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: February 3, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 31, 2017 Council Meeting**

**Gary Keyser<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-189**

v.

**Morris School District (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** All written correspondence and written notes between TEAM and the Morris School District pertaining to the grievance on overtime issue with the custodial and maintenance staff that started May 2014.

**Custodian of Record:** Christine A. Kelly  
**Request Received by Custodian:** June 3, 2015  
**Response Made by Custodian:** June 12, 2015  
**GRC Complaint Received:** June 19, 2015

**Background<sup>3</sup>**

**Request and Response:**

On June 3, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 12, 2015, the Custodian responded in writing, denying access to the responsive record, stating that, “information generated by or on behalf of public employers or public employees in connection with . . . any grievance filed by or against an individual” is exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1.

**Denial of Access Complaint:**

On June 19, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the basis of denial, stating that his official grievance filed against the Morris School District (“District”) was on behalf of a group of forty (40) staff members and not grievance filed by an individual. Therefore, N.J.S.A. 47:1A-1.1 should not apply.

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

<sup>2</sup> Represented by Marie-Laurence Fabian, Esq. (Morristown, NJ).

<sup>3</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 July 16, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 3, 2015. The Custodian further certified that she responded in writing on June 12, 2015, denying access to responsive record because it contains information pertaining to a grievance filing. N.J.S.A. 47:1A-1.1.

The Custodian argued that whether the grievance filed is on behalf of an individual or a group is irrelevant under N.J.S.A. 47:1A-1.1. The Custodian cited Fischer, II v. NJ Dep’t of Corr., GRC Complaint No. 2005-170 (May 2006), in which the complainant sought all documents pertaining to a grievance filing. The record revealed that the grievance was a group grievance that was presented jointly by two (2) members of the local union. The custodian argued that responsive records contained grievance information and are therefore exempt under N.J.S.A. 47:1A-1.1. The Council agreed, explicitly identifying the grievance as a group grievance and held that there was no unlawful denial of access. The Custodian stated that the instant case supports her argument that the grievance exemption applies to all grievance matters, and not just those filed on behalf of an individual complainant.

### 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.

OPRA also states that “information generated by or on behalf of public employers or public employees in connection . . . with any grievance filed by or against an individual” are not public records and are exempt from disclosure. N.J.S.A. 47:1A-1.1.

In the instant matter, the Complainant does not deny that the responsive record located by the Custodian contains information in connection to a grievance. Rather, the Complainant contends that the language in N.J.S.A. 47:1A-1.1 only restricts public access to grievance information pertaining to an individual complainant, and not information stemming from complaints filed as a group. The Custodian disagrees, citing Fischer, GRC 2005-170, where the GRC upheld a denial of access to records stemming from a group grievance.

On review, the GRC agrees with the Custodian. Notwithstanding the Complainant’s argument that he filed the grievance on behalf of himself and other employees, any information generated from said grievance invariably involves public employees and employers and thus falls under the OPRA exemption. The GRC made no mention of any distinction between an individual grievance and a group grievance in Fischer, GRC 2005-170, and declines to do so here.

Therefore, the Custodian lawfully denied access to Complainant's June 3, 2015 OPRA request. N.J.S.A. 47:1A-6. The Custodian certified that the responsive record contains information generated by or on behalf of public employees or employers in connection with a grievance filed by the Complainant, and the Complainant does not adequately refute the Custodian's certification. Therefore, the responsive record is exempt from access under OPRA. N.J.S.A. 47:1A-1.1. *See also* Fischer, GRC 2005-170.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to Complainant's June 3, 2015 OPRA request. N.J.S.A. 47:1A-6. The Custodian certified that the responsive record contains information generated by or on behalf of public employees or employers in connection with a grievance filed by the Complainant, and the Complainant does not adequately refute the Custodian's certification. Therefore, the responsive record is exempt from access under OPRA. N.J.S.A. 47:1A-1.1. *See also* Fischer, II v. NJ Dep't of Corr., GRC Complaint No. 2005-170 (May 2006).

Prepared By: Samuel A. Rosado  
Staff Attorney

January 24, 2017