



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

October 27, 2015 Government Records Council Meeting

Luigi Altomote
Complainant

Complaint No. 2015-39

v.

Branchburg Township School District (Somerset)
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 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 because N.J.A.C. 6A:32-7.5 only permits the Complainant access to information regarding S.A. (his son) and because he did not provide any evidence supporting that he was allowed to obtain any other student information, the redactions made to the responsive e-mails were lawful. N.J.S.A. 47:1A-9; N.J.A.C. 6A:32-7.1 et seq.; Bava v. Bergen Cnty. Sch. Dist., GRC Complaint No. 2003-84 (January 2004); Popkin v. Englewood Bd. of Educ. (Bergen), GRC Complaint No. 2011-263 (December 2012); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014). *See also* Martinez v. Edison Bd. of Educ. (Middlesex), GRC Complaint No. 2014-126 (May 2015). Therefore, the Custodian lawfully denied access to those redactions contained within the responsive e-mails. 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 27th Day of October, 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: October 29, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting**

**Luigi Altomonte¹
Complainant**

GRC Complaint No. 2015-39

v.

**Branchburg Township School District (Somerset)²
Custodial Agency**

Records Relevant to Complaint: Copies of all e-mails or written communications regarding S.A., the Complainant's son.

Custodian of Record: Theresa Linskey
Request Received by Custodian: January 15, 2015
Response Made by Custodian: January 16, 2015
GRC Complaint Received: February 23, 2015

Background³

Request and Response:

On January 15 2015, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On January 16, 2015, the Custodian responded in writing, advising that she received the Complainant's OPRA request and sought clarification regarding the applicable time frame. On January 20, 2015, the Custodian e-mailed the Complainant confirming that, per their discussion, she would provide records between December 31, 2014, and the present date.

On January 22, 2015, the Complainant sought a status update. On the same day, the Custodian e-mailed the Complainant advising that an extension of time until January 29, 2015, would be necessary because of the number of e-mails that the Branchburg Township School District ("District") needed to review. The Complainant replied, noting his concern for the delay and asking whether the Custodian could disclose those e-mails already reviewed and subsequently provide the remainder on January 29, 2015. The Custodian replied, advising that she was providing all e-mails to Custodian's Counsel for review at that time and that she would provide a response early in the next week.

¹ No legal representation listed on record.

² Represented by David B. Rubin, Esq., of David B. Rubin, P.C. (Metuchin, NJ).

³ 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.

On January 29, 2015, the Custodian responded to the Complainant, denying the records under OPRA because all student records are confidential. However, the Custodian provided the Complainant, as S.A.'s parent, multiple records to include several e-mails (with redactions) in accordance with the New Jersey State Board of Education's ("BOE") regulations governing disclosure of student records. N.J.A.C. 6A:32-7.1 et seq.

Denial of Access Complaint:

On March 13, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed that the responsive records were exempt from disclosure. The Complainant stated that the subject OPRA request resulted from an issue involving S.A. that garnered several e-mails from other parents. Further, the Complainant asserted that those e-mails he did obtain contained redactions of various names and e-mail addresses.

Supplemental Submissions:

On March 6, 2015, the Custodian's Counsel e-mailed the GRC to request guidance on its process for motions to dismiss a complaint on its face. Counsel argued that the Complainant's OPRA request sought student records, which were exempt from disclosure under OPRA, the federal Family Educational Rights & Privacy Act ("FERPA"), and State BOE regulations at N.J.A.C. 6A:32-7.1 et seq. Counsel asserted that the fact that the Complainant is S.A.'s parent does not impact the disclosability of the records under OPRA. *See* Bava v. Bergen Cnty. Sch. Dist., GRC Complaint No. 2003-84 (January 2004).

Counsel noted that, although the Custodian denied access to the responsive records under OPRA, she also treated the request as one made in accordance with the State BOE's regulations and provided records with redactions. Counsel stated that individuals obtaining records in accordance with the State BOE's regulations have an alternate appeal process through the Commissioner of the New Jersey Department of Education ("Commissioner").⁴

Statement of Information:

On March 13, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on January 15, 2015, and that she responded in writing on January 16, 2015, requesting that the Complainant provide a time frame for his OPRA request. The Custodian certified that, after an exchange of correspondence and an extension of time, she denied access to responsive records under OPRA but provided multiple records to include records in accordance with N.J.A.C. 6A:32-7.1.

The Custodian argued that she lawfully redacted certain identifiable information from the responsive e-mails in accordance with both federal and State statutes and regulations governing the disclosure of student records. The Custodian argued that the Complainant's status as S.A.'s

⁴ The GRC responded to Custodian's Counsel via e-mail on March 10, 2015, advising that its regulations required the Custodian to submit a Statement of Information. N.J.A.C. 5:105-2.4(a).

parent did not impact the fact that said records are not subject to disclosure under OPRA. *See Bava*, GRC 2003-84.

Additional Submissions:

On March 13, 2015, the Custodian's Counsel e-mailed the GRC, reiterating that the District denied the Complainant access (citing FERPA and N.J.A.C. 6A:32-7.1 et seq.) to the responsive records under OPRA because of the common standard affixed to all requestors regardless of their identities. Counsel asserted that the Complainant status as S.A.'s parent does not give him any greater access to the records under OPRA. Counsel argued that the Complainant may have a right to access those records under FERPA and the State BOE's regulations, but any challenge to the sufficiency of the response must be by way of appeal to the Commissioner per N.J.A.C. 6A:3. On March 14, 2015, the Complainant e-mailed the Custodian's Counsel and GRC, clarifying that, under OPRA, he sought e-mails from "concerned parents" regarding a social media post from S.A. that was not directed towards students. For that reason, the Complainant disputed that the responsive records were considered "student records" and further argued that *Bava*, GRC 2003-84, did not apply to this complaint. The Complainant asserted that Counsel should review Mendes v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-184 (Interim Order dated June 29, 2010), regarding e-mail correspondence.

On March 14, 2015, the Custodian's Counsel responded to the Complainant and GRC, stating that State BOE regulations define "student records" as any "information related to an individual student . . . maintained within the school district . . ." N.J.A.C. 6A:32-2.1. Counsel further noted that State BOE regulations allow for limited access of student records to include the student's parents but not the general public. N.J.A.C. 6A:32-7.5; 20 U.S.C. § 1232(g)(b)(1). Additionally, Counsel stated that in situations where a record referred to multiple students, FERPA supports that a school district must disclose the record to a parent with redactions for all "personally identifiable information" of other students to include their names and parents' names. 34 C.F.R. § 99.3. Counsel contended that here, the responsive records are "student records" because they pertain to S.A. and were disclosed to the Complainant in accordance with federal law and State regulations. However, Counsel asserted that the Custodian properly redacted all other parental names expressing concern for their own child's safety under FERPA and State BOE regulations. Counsel also reiterated that any challenge of this denial should have been appealed to the Commissioner and not the GRC.

On March 16, 2015, the Custodian's Counsel e-mailed the GRC, noting that its decision in White v. William Patterson Univ., GRC Complaint No. 2008-216 (August 2009), supported the District's position in this complaint.

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 provides that:

[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

N.J.S.A. 47:1A-9(a).

The regulations of the State BOE and the Commissioner define a “student record” as “. . . information related to an individual student *gathered within or outside the school district and maintained within the school district*, regardless of the physical form in which it is maintained.” N.J.A.C. 6A:32-2.1 (emphasis added). The regulations of the State Board of Education and the Commissioner of Education provide that “[o]nly authorized organizations, agencies or persons as defined herein shall have access to student records . . .” to include “the parent of the student under the age of 18 . . .” N.J.A.C. 6A:32-7.5(e)(1). Finally, the regulations require that “[i]n complying with this section, individuals shall adhere to requirements pursuant to [OPRA] and [FERPA].” N.J.A.C. 6A:32-7.5(g).

The Council’s prior decisions on this subject indicate that an individual may have access to “student records” if they meet one of the codified exceptions present in the State Board of Education’s regulations. In Bava, GRC 2003-84, the GRC highlighted this distinction, providing that “[p]arents have certain rights of access to their child’s school records pursuant to N.J.A.C. 6:3-6.5(c), although not absolute . . .”

Moreover, in Popkin v. Englewood Bd. of Educ. (Bergen), GRC Complaint No. 2011-263 (December 2012), the complainant sought a settlement agreement between the Board of Education and parents of a special education student. Following the Denial of Access Complaint, the Board argued that the settlement agreement was a student record exempt from disclosure under N.J.A.C. 6A:32. The Council agreed, holding that:

[B]ecause the requested record is a student record pursuant to N.J.A.C. 6A:32-1.1, and because N.J.A.C. 6A:32-7.5 provides that only authorized persons enumerated in the regulation shall have access to student records, and because the evidence of record reveals the Complainant is not such an authorized person, and because exemptions from disclosure provided by regulations promulgated under the authority of a statute apply to OPRA pursuant to N.J.S.A. 47:1A-9(a), the Custodian did not unlawfully deny the Complainant access . . .

Id. at 8. *See also* Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014).

Most recently, the Council relied on these “rights” to determine that a custodian lawfully redacted and disclosed student records to remove all student information except for the complainant’s child. *See* Martinez v. Edison Bd. of Educ. (Middlesex), GRC Complaint No. 2014-126 (May 2015).

Here, the Complainant sought access to e-mails sent to the District by parents concerned with their children’s safety and well-being after S.A. posted a threatening message about a teacher on social media. The Custodian denied access to these records under OPRA but disclosed same with redactions of identifying information in accordance with State BOE regulations. The Complainant filed this complaint to dispute the redactions, arguing that the e-mails should be disclosed without redactions because they are not student records. However, the District’s argued that their position was that the Complainant’s identity as S.A.’s parent was irrelevant under OPRA and that his complaint was more appropriately directed to the Commissioner per State BOE regulations.

However, the Council’s holdings in Bava, GRC 2003-84, Popkin, GRC 2011-263, and Inzelbuch, GRC 2014-92, support that requestors identified as authorized persons can obtain access to student records under OPRA. Further, the Council’s recent decision in Martinez, GRC 2014-126, is instructive here because the complainant sought records regarding his own daughter, to include e-mails, and received redacted records excising all other student information. These decisions clearly support that a custodian may redact student information for all children to which the requestors are not authorized to obtain under State BOE regulations and FERPA. Given the broad definition within both the State BOE’s regulations and FERPA, the responsive e-mails and information contained therein certainly fall under the umbrella of “student records.”

Thus, notwithstanding that the Custodian denied access to the records under OPRA and purported to disclose same under authority of the State BOE’s regulations,⁵ the GRC is satisfied that the Custodian properly redacted the e-mails at issue here to protect the identities of the concerned parents and their children. Same is consistent with the Council’s handling of student records and redaction of other student information where multiple students are included in the same record.

Accordingly, because N.J.A.C. 6A:32-7.5 only permits the Complainant access to information regarding S.A. (his son) and because he did not provide any evidence supporting that he was allowed to obtain any other student information, the redactions made to the responsive e-mails were lawful. N.J.S.A. 47:1A-9; N.J.A.C. 6A:32-7.1 et seq.; Bava, GRC 2003-84; Popkin, GRC 2011-263; Inzelbuch, GRC 2014-92. *See also* Martinez, GRC 2014-126. Therefore, the Custodian lawfully denied access to those redactions contained within the responsive e-mails. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

⁵ There is no evidence in the record to support that the District withheld access to any records. The District stresses that records were disclosed based on State BOE regulations and not OPRA.

The Executive Director respectfully recommends the Council find that because N.J.A.C. 6A:32-7.5 only permits the Complainant access to information regarding S.A. (his son) and because he did not provide any evidence supporting that he was allowed to obtain any other student information, the redactions made to the responsive e-mails were lawful. N.J.S.A. 47:1A-9; N.J.A.C. 6A:32-7.1 et seq.; Bava v. Bergen Cnty. Sch. Dist., GRC Complaint No. 2003-84 (January 2004); Popkin v. Englewood Bd. of Educ. (Bergen), GRC Complaint No. 2011-263 (December 2012); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014). *See also* Martinez v. Edison Bd. of Educ. (Middlesex), GRC Complaint No. 2014-126 (May 2015). Therefore, the Custodian lawfully denied access to those redactions contained within the responsive e-mails. N.J.S.A. 47:1A-6.

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

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2015