



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 19, 2020 Government Records Council Meeting

David Herron
Complainant

Complaint No. 2018-188

v.

Paterson Board of Education (Passaic)
Custodian of Record

At the May 19, 2020 public meeting, the Government Records Council (“Council”) considered the May 12, 2020 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 the Complainant’s request seeks information rather than a specifically identifiable government record, the request is invalid pursuant to 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); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury (Hunterdon), GRC Complaint No. 2007-151 (February 2009); Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-66 (August 2012); Lopez vs. N.J. Dep’t of Corr., GRC Complaint No. 2008-250 (November 2009). Thus, the Custodian has lawfully denied access to Complainant’s request. N.J.S.A. 47:1A-6. Further, because the request is invalid, the GRC declines to determine whether the asserted exemption applied.

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 19th Day of May 2020

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: May 20, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 19, 2020 Council Meeting**

David Herron¹
Complainant
v.

GRC Complaint No. 2018-188

Paterson Board of Education (Passaic)²
Custodial Agency

Records Relevant to Complaint: Via e-mail, copies of the home addresses for the following members of the Board of Education (“BOE”):

1. Oshin Castillo
2. Nakima Redmon
3. Vincent Arrington
4. Emanuel Capers
5. Johnathan Hodges
6. Manuel Martinez
7. Joel Ramirez
8. Kenneth Simmons

Custodian of Record: Luis M. Rojas
Request Received by Custodian: July 31, 2018
Response Made by Custodian: August 14, 2018
GRC Complaint Received: August 20, 2018

Background³

Request and Response:

On July 31, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 14, 2018, the Custodian responded in writing denying the subject OPRA request. The Custodian asserted that the Complainant’s request failed to identify a specific government record sought. The Custodian further asserted that the disclosure of the BOE members’ home street addresses would violate their reasonable expectation of privacy. N.J.S.A. 47:1A-1. Scheeler v. N.J. Dep’t of Educ., 2017 N.J.

¹ No legal representation listed on record.

² Represented by Robert E. Murray, Esq., of Robert E. Murray LLC. Law Offices, (Shrewsbury, 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.

Super. Unpub. LEXIS 119 (App. Div. 2017); Vargas o/b/o The Philadelphia Inquirer v. N.J. Dep't of Educ., GRC Complaint No. 2012-126 (April 2013).

Denial of Access Complaint:

On August 20, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that candidates in the Paterson school district must meet a residency requirement to run and serve on the school board. N.J.S.A. 18A:12-1. The Complainant cited Brennan v. Bergen Cnty. Prosecutor's Office, 230 N.J. 357 (2017), arguing that “. . . where residency is a requirement, the Brennan ruling held that public access to home addresses is important to enable the public to confirm residency.” The Complainant further argued that “. . . when home addresses are redacted from records, the public cannot verify that residency requirements are actually satisfied . . . [t]herefore, the Custodian unlawfully denied access” to his OPRA request.

Statement of Information:

On October 2, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 31, 2018. The Custodian certified that he responded in writing on August 14, 2018, advising the Complainant that his OPRA request failed to identify a specific government record sought. The Custodian asserted that the disclosure of BOE members’ home street addresses would violate their reasonable expectation of privacy. N.J.S.A. 47:1A-1; Scheeler, 2017 N.J. Super. Unpub. LEXIS 119; Vargas, GRC 2012-126. The Custodian further asserted that there was not a sufficient public need for the BOE member’s home street addresses.

The Custodian argued that in Scheeler, the complainant’s OPRA request sought copies of the financial disclosure statement (“FDS”) forms of members of the Woodbine BOE. The Custodian further argued that the custodian there disclosed the FDS forms with the members’ home street addresses redacted, leaving the town, state and zip codes visible under the privacy exemption. N.J.S.A. 47:1A-1. The Custodian asserted that in the subsequent Denial of Access Complaint, the Council found in favor of non-disclosure. Scheeler v. N.J. Dep’t of Educ., GRC Complaint No. 2014-125 (January 2015). The Custodian noted that the Council relied on its previous decision in Vargas, GRC 2012-126, holding that the BOE member’s home street addresses were lawfully redacted. See also Wolosky v. Twp. of Harding (Morris), GRC Complaint No. 2010-221 (June 26, 2012).

The Custodian stated that on appeal, the Appellate Division applied the seven (7) factor balancing test established in Doe v. Poritz, 142 N.J. 1 (1995). The Custodian stated that the balancing test conducted by the Scheeler court weighed in favor of non-disclosure and the Council decision was thus affirmed. The Custodian further averred court agreed with the GRC that disclosure could lead to the harassment of BOE members and discouragement of those who wish to run or serve. The Custodian additionally stated that the court rejected the Complainant’s argument that residency requirements warrant full disclosure of BOE members’ home street addresses.

The Custodian argued that the facts in Scheeler and Vargas militated toward non-disclosure of the BOE members' home street addresses. The Custodian further argued that the fact that BOE members are not required under the School Ethics Act to disclose their home street addresses also supports non-disclosure. The Custodian asserted that after further review of previous GRC decisions, it appeared that the Council was more likely than the courts to uphold the privacy interest redactions.

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 Superior Court has held that: [w]hile 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. (Emphasis added.)

[MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).]

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).

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. (emphasis added). See also Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005), N.J. Builders Ass'n. v. N.J. 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).

In Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-66 (August 2012), the Complainant requested the home addresses for five (5) employees of the Department of Corrections. In that complaint, the Council held that her request was invalid under OPRA because it failed to specifically identify the government record sought pursuant to MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. 166.

Moreover, in Lopez vs. N.J. Dep't of Corr., GRC Complaint No. 2008-250 (November 2009), the complainant's OPRA request sought the current work address and any alternate address for a physician who previously worked at a prison. In that instance, the custodian responded to the

complainant, advising him that OPRA only requires a custodian to respond to a request for a specific government record and does not require a custodian to conduct research and correlate data from various records. The Council held that because the complainant's request sought information rather than a specific identifiable government record, the request was invalid pursuant to MAG, 375 N.J. Super. at 546.

Here, the Complainant's OPRA request sought information, the home addresses of eight (8) members of the Paterson BOE, rather than government records. The Custodian replied in writing advising the Complainant that his request was invalid because he did not name a specific responsive government record. The Custodian also asserted that BOE members are entitled to a reasonable expectation of privacy under N.J.S.A. 47:1A-1; Scheeler, 2017 N.J. Super. Unpub. 119; Vargas, GRC 2012-126. In the Denial of Access Complaint, the Complainant cited Brennan, 233 N.J. at 332 to assert that the more recent ruling meant that the home addresses should be disclosed to the public where residency requirements were at issue. In the SOI, the Custodian argued that the Scheeler and Vargas cases pertained to the disclosure of BOE member's home street addresses via their FDS forms. The Custodian further argued that the Court rejected the residency argument in Scheeler and in Vargas because the city, state, and zip codes were not redacted from the responsive records. It should be noted that the Custodian did not address the validity of the request in the SOI.

Notwithstanding, the Complainant's request here does not specify a "government record", as was the case in Harris and Lopez. Although the Complainant identified the individuals whose addresses he sought, he did not identify any specific government record that may contain said information. In contrast to Scheeler and Vargas, the Complainant requested home address information for eight (8) named BOE members, not their FDS forms on file. Thus, even if it could be assumed that the information was contained in FDS forms, the Custodian was not obligated to make such an assumption in the face of an invalid request for information.

Therefore, because the Complainant's request seeks information rather than a specifically identifiable government record, the request is invalid pursuant to MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Harris, GRC 2011-66; Lopez, GRC 2008-250. Thus, the Custodian has lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6. Further, because the request is invalid, the GRC declines to determine whether the asserted exemption applied.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's request seeks information rather than a specifically identifiable government record, the request is invalid pursuant to 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); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury (Hunterdon), GRC Complaint No. 2007-151 (February 2009); Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-66 (August 2012); Lopez vs. N.J. Dep't of Corr., GRC Complaint No. 2008-250 (November 2009). Thus, the Custodian has lawfully

denied access to Complainant's request. N.J.S.A. 47:1A-6. Further, because the request is invalid, the GRC declines to determine whether the asserted exemption applied.

Prepared By: Brandon Garcia
Case Manager

May 12, 2020