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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 26, 2021 Government Records Council Meeting

James McGinnis
Complainant
v.
Lenape Regional High School District (Burlington)
Custodian of Record

Complaint No. 2019-233

At the January 26, 2021 public meeting, the Government Records Council ("Council") considered the January 19, 2021 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 has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking a list of blocked websites. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't 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 26th Day of January 2021

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: January 28, 2021

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
January 26, 2021 Council Meeting

James McGinnis[1] **GRC Complaint No. 2019-233**
Complainant

v.

Lenape Regional High School District (Burlington)[2]
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of "records" showing the names of website URLs or applications blocked or filtered by Lenape Regional High School District ("District") as of November 8, 2019.[3]

Custodian of Record: Paige MacGregor
Request Received by Custodian: November 11, 2019
Response Made by Custodian: November 15, 2019
GRC Complaint Received: November 20, 2019

Background[4]

Request and Response:

On November 8, 2019, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On November 15, 2019, the Custodian responded in writing first stating that the District "object[ed]" to the request because it sought information exempt from disclosure under the "administrative and technological information" exemption. N.J.S.A. 47:1A-1.1. The Custodian averred that disclosure of specifically blocked or filtered sites would jeopardize the District's security. The Custodian stated that notwithstanding the forgoing, she was denying the request because no responsive records existed. The Custodian also provided eleven (11) general categories of content blocked by the District.

Denial of Access Complaint:

On November 20, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that the Burlington County Times

[1] No legal representation listed on record.
[2] Represented by R. Taylor Ruilova, Esq., of Comegno Law Group, P.C. (Moorestown, NJ).
[3] The Complainant sought 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.

is working on an investigation "focused on school safety and efforts to protect children from threats while using school computers and government-supplied internet servers." The Complainant noted that multiple school districts have already responded to a similar OPRA request, which has illustrated ways that schools have both protected and, at times, censored internet information viewable by students.

The Complainant contended that the Custodian unlawfully denied him access to the requested records. The Complainant asserted that the public has a right to know whether a school district is taking steps to protect its student population from internet threats. The Complainant further argued that the public also has a right to know if a school district is using taxpayer monies to censor websites.

Statement of Information:[5]

On January 14, 2020, the Custodian filed a Statement of Information ("SOI") attaching a legal certification from Network Administrator Hosung Kim. The Custodian certified that she received the Complainant's OPRA request on November 11, 2019. The Custodian certified that her search included asking Mr. Kim to contact the District's firewall manufacturer, who informed them that the hardware did not contain the ability to populate specific blocked websites. Kim Cert. ⁋ 6-7, 9. The Custodian certified that she responded in writing on November 15, 2019 denying the OPRA request because no records existed but provided an eleven (11) item list of general site categories blocked by the District.

The Custodian argued that she lawfully denied access to the subject OPRA request because no responsive list of blocked websites exists. Kim Cert. ⁋ 8-10. The Custodian contended that notwithstanding her initial objection to disclosure under N.J.S.A. 47:1A-1.1, the District's search resulted in a finding that no records existed. The Custodian further noted that not only did the District not maintain a responsive record, but that the firewall program could not produce the record. Kim Cert. ⁋ 10.

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 previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). In the matter before the Council, the Custodian denied access to the Complainant's OPRA request primarily because no records existed. The Custodian

[5] On December 9, 2019, this complaint was referred to mediation. On December 16, 2019, this complaint was referred back to the GRC for adjudication.

subsequently certified to this fact in the SOI. The Custodian supported her position by submitting Mr. Kim's certification. The Custodian also submitted an e-mail from the firewall manufacturer confirming that the District's system did not contain a function allowing them to produce a list of specific blocked websites.

Upon review of the arguments submitted, the GRC is persuaded that the Custodian lawfully denied access to the requested list because no records existed. The GRC bases this conclusion on the Custodian's certified statements, Mr. Kim's legal certification, and the manufacturer's e-mail. Thus, the evidence of record supports that no responsive block list exists or can be produced.[6]

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking a list of blocked websites. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking a list of blocked websites. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Executive Director

January 19, 2021

[6] The GRC notes that it will not address the Custodian's assertion that the record would have been exempt under N.J.S.A. 47:1A-1.1 because the evidence supports that no records exist.