



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 14, 2021 Government Records Council Meeting

Vanessa Gottesfeld
Complainant

Complaint No. 2020-169

v.

Greenwich Township School District (Gloucester)
Custodian of Record

At the December 14, 2021 public meeting, the Government Records Council (“Council”) considered the December 8, 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 his burden of proof that no unlawful denial of access occurred regarding the Complainant’s August 28, 2020 OPRA request. Specifically, the Custodian timely and reasonably requested clarification of the request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Liebel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 2013).

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 14th Day of December 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: December 16, 2021

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 14, 2021 Council Meeting**

**Vanessa Gottesfeld¹
Complainant**

GRC Complaint No. 2020-169

v.

**Greenwich Township School District (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the most recent Heating, Ventilation and Air Conditioning (“HVAC”) “System Commissioning Report” prepared by an engineer and or architect verifying that the HVAC systems in the Broad Street School and Nehaunsey Middle School operate “in conformity with design intent.”

Custodian of Record: Scott A. Campbell

Request Received by Custodian: August 28, 2020

Response Made by Custodian: September 8, 2020

GRC Complaint Received: September 15, 2020

Background³

Request and Response:

On August 28, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 8, 2020, the Custodian responded in writing stating that the subject OPRA request failed to “identify with reasonable clarity the specific government records sought.” Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian thus sought clarification within seven (7) business days noting that failure to provide same would result in a closure of the OPRA request. The Complainant did not respond to the Custodian’s request for clarification.

Denial of Access Complaint:

On September 15, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial on the

¹ No legal representation listed on record.

² Represented by Paul Kalac, Esq., of Weiner Law Group, LLP (Parsippany, 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.

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basis that the request was invalid. The Complainant did not include any additional arguments regarding her position.

Statement of Information:

On September 24, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 28, 2020. The Custodian affirmed that upon reviewing the request, he determined he had never heard of a “HVAC System Commissioning Report;” thus, he contacted Facilities Manager Gerardo Batista. The Custodian certified that upon confirming with Mr. Batista that he was unaware of such a report, he determined that clarification was necessary. The Custodian certified that he responded in writing on September 8, 2020 seeking this clarification. The Custodian stated that he received no reply from the Complainant prior to her filing the instant complaint. The Custodian averred that after receiving the complaint, he engaged in researching the Greenwich Township School District’s (“District”) files for a specific “HVAC System Commissioning Report” that yielded no results. The Custodian affirmed that Mr. Batista also inquired about this type of report with multiple other school districts, many of which “did not make or maintain” any records by that name. The Custodian thus certified that no reports responsive to the Complainant’s OPRA request exist.

The Custodian contended that he acted properly in seeking clarification of the Complainant’s OPRA request. The Custodian asserted that in addition to not having any prior knowledge of such a report, he could not be sure whether any that may have existed would have addressed the criteria contained in the Complainant’s OPRA request. The Custodian noted that it also appears that school districts were not required to make or maintain such a report. The Custodian argued that based on the forgoing, he believed clarification of the entire request (rather than asking for specific information like a smaller range of dates or specific names) was necessary. The Custodian argued that rather than responding to the clarification request, the Complainant chose to file the instant complaint within seven (7) business days of his response. The Custodian argued that even if his clarification request could be construed as a denial of access, the Council’s case law supports that where a custodian requests clarification and receives no response, they did not unlawfully deny access to an OPRA request. Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005); Herron v. New Jersey Dep’t of Educ., GRC Complaint No. 2011-363 (December 2012).

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.

In Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 2013), the Council determined that the custodian bore her burden of proving

a lawful denial of access to the requested records because she sought clarification of the complainant's request and the complainant provided no clarification. See also Herron v. New Jersey Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005). Important to the clarification issue is consideration as to whether a custodian's request was reasonable. See e.g. Liebel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); but see Archer v. Cnty. of Gloucester, GRC Complaint No. 2018-270 (Interim Order dated April 28, 2020). Finally, the Council has held that when a custodian seeks clarification of a request, the time for the custodian to respond will begin anew once such clarification is received. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012).

Here, the Custodian responded to the Complainant's OPRA request on September 8, 2020 stating that he believed it invalid because it failed to identify a specific record. The Custodian thus sought clarification and noted that the request would be considered closed if he did not receive a response within seven (7) business days. The Complainant subsequently filed the instant complaint four (4) business days later without responding to the Custodian's clarification request. As part of the SOI, the Custodian provided a detailed explanation as to why he sought clarification: 1) neither he nor Mr. Batista heard of a record named the "HVAC System Commissioning Report;"⁴ and 2) it was unknown whether the report would meet the conditions of the subject OPRA request. The Custodian further noted that following this complaint, he researched the District's files and failed to locate a responsive report; Mr. Batista similarly found that multiple other school districts did not possess such a report.

Based on the forgoing, the GRC finds compelling the reasonableness of seeking clarification in of the subject OPRA request. Liebel, GRC 2004-51. While the GRC disagrees that the request failed to identify a specific record, the Custodian's detailed SOI explanation provides a sufficient basis for seeking clarification. It highlights the confusion caused by the specificity of terms included in the OPRA request, and the lengths at which the District attempted to determine if that specific report even existed. However, and notwithstanding the reasonable request for clarification, the Complainant failed to respond providing same. Thus, and consistent with Schiller, GRC 2013-293, no unlawful denial of access occurred here.

Accordingly, the Custodian has borne his burden of proof that no unlawful denial of access occurred regarding the Complainant's August 28, 2020 OPRA request. Specifically, the Custodian timely and reasonably requested clarification of the request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Liebel, GRC 2004-51; Schilling, GRC 2013-293.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that no unlawful denial of access occurred regarding the Complainant's August 28, 2020 OPRA request. Specifically, the Custodian timely and reasonably requested

⁴ The report name, as well as the description contained in the subject OPRA request, appear to be quoted directly from the N.J. Department of Labor & Workforce Development's regulations addressing indoor quality air standards. See N.J.A.C. 12:100-13.2.

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clarification of the request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Liebel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 2013).

Prepared By: Frank F. Caruso
Executive Director

December 8, 2021