



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

September 29, 2022 Government Records Council Meeting

Ama Quakyi
Complainant

Complaint No. 2021-204

v.

Irvington Board of Education (Essex)
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council (“Council”) considered the September 22, 2022 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:

1. The Custodian unlawfully denied access to the requested attendance records sought by the Complainant in her OPRA requests. N.J.S.A. 47:1A-6. Specifically, attendance records clearly fall within the definition of a “payroll record” and are disclosable under OPRA. N.J.S.A. 47:1A-10; Burdick v. Franklin Twp. Bd. of Educ. (Hunterdon), GRC Complaint No. 2007-74 (Interim Order dated October 31, 2007). Notwithstanding this denial, the GRC declines to order disclosure because same occurred on August 24, 2021 and September 8, 2021 respectively. However, the Custodian did not unlawfully deny to Ms. Coleman’s specific start and end times on April 22, and 30, 2013 because the evidence of record supports that there is no comprehensive record containing same; the Custodian is not required to include same in an already existent record to satisfy the subject OPRA requests. Matthews, Jr. v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009).
2. The Custodian unlawfully denied access to the requested attendance records, which fall firmly within the definition of a “payroll record.” N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. However, the Custodian did not unlawfully deny access to the specific hours worked because the evidence of record supports that no comprehensive records containing same existed. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 29th Day of September 2022

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 6, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2022 Council Meeting**

**Ama Quakyi¹
Complainant**

GRC Complaint No. 2021-204

v.

**Irvington Board of Education (Essex)²
Custodial Agency**

Records Relevant to Complaint:

August 4, 2021 OPRA request: “[I]nformation on whether Carol Coleman worked on April 22, 2013.”

August 18, 2021 OPRA request: Electronic copies via e-mail of “[t]ime of work” for Ms. Coleman on April 22, and 30, 2013 including “[b]eginning time and end time” for each day.

August 21, 2021 OPRA request: Electronic copies via e-mail of attendance records, either in sign-in sheets, clocked hours, or other means of time tracking, for Ms. Carol on April 22, and 30, 2013, as well as payroll records for the weeks containing those days.

Custodian of Record: Reginald Lamptey

Request Received by Custodian: August 12, 2021; August 19, 2021 August 21, 2021

Response Made by Custodian: August 13, 2021; August 19, 2021; August 24, 2021

GRC Complaint Received: August 24, 2021

Background³

Request and Response:

On August 4, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 12, 2021, the Complainant e-mailed the Custodian advising that she hand-delivered an OPRA request and asked whether the information could be obtained through OPRA or if she should seek same through the courts. The Complainant also noted that she wished to amend her pending OPRA request to know if Ms. Coleman worked a full day. The Complainant asked whether she would have to file a new

¹ No legal representation listed on record.

² Represented by Ronald Hunt, Esq., of Hunt, Hamlin, & Ridley (Newark, 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.

OPRA request or if the current pending request would suffice. On the same day, the Custodian responded noting that he did not receive her OPRA request. The Complainant subsequently submitted an amended OPRA request on the Township of Irvington's official OPRA request form to include the additional information sought.

On August 13, 2021, the Custodian again responded noting that he did not receive the August 4, 2021 OPRA request. The Complainant responded forwarding her amended OPRA request. The Custodian responded advising that the OPRA request form was not the proper form and that he could only disclose "name, title, start and end date[s]."

On August 18, 2021, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records and noting that the requested records are not exempt under OPRA. On August 19, 2021, Noelle van Baaren, Esq. from Hunt, Hamlin, and Ridley (the "Firm") responded in writing on behalf of the Custodian responding in writing denying the subject OPRA request because the exceptions to OPRA's personnel exemption did not include specific hourly attendance. N.J.S.A. 47:1A-10. On the same day, the Complainant responded advising that she would be filing a Denial of Access Complaint because she believed the requested information was disclosable under OPRA based on existing precedent. See Jackson v. Kean Univ., GRC Complaint No. 2002-98 (November 2003); Gordon v. City of Orange (Essex), GRC Complaint No. 2013-189 (Interim Order dated August 27, 2013).

On August 20, 2021, Ms. van Baaren sent a letter to the Government Records Council ("GRC") in response to the Denial of Access Complaint submission caused to be filed therewith. Ms. van Baaren first asserted that the Complainant confirmed that her August 4, 2021 OPRA request was on the wrong form; thus, the IBOE's denial of it was proper. Ms. van Baaren further argued that IBOE lawfully denied access to the August 18, 2021 OPRA request because the facts here are not similar to Jackson, GRC 2022-98. Ms. van Baaren argued that Ms. Coleman was a salaried employee, and her pay was "not related to her attendance records." Ms. van Baaren also argued that the Complainant sought the "basis for [Ms. Coleman's] absence," which is exempt from access. Ms. van Baaren further argued that to require disclosure of the reasons why an individual was absent, such as they were undergoing cancer treatment for example, would result in a "nonsensical" disclosure of already exempt information.

On August 21, 2021, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records, noting that the GRC has already held that sign-in sheets were subject to disclosure as "payroll records." See Havlusch, Jr. v. Borough of Allenhurst (Monmouth), GRC Complaint No. 2011-243 (Interim Order dated December 18, 2012).

Also on August 23, 2021, the Complainant sent an e-mail to Ms. van Baaren acknowledging that she did submit her August 4, 2021 OPRA request on the wrong form. The Complainant nonetheless refuted that she sought any underlying reasons for an absence because she knew disclosure would be "against the law." The Complainant noted that she had filed a new OPRA request with clarifying information and that the classification of an employee as hourly or salary does not impact the disclosability of payroll records. The Complainant requested that if IBOE intended to deny access, they do so shortly so she may amend her pending Denial of Access Complaint.

Denial of Access Complaint:

On August 24, 2021, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant noted that she originally hand-delivered an OPRA request to the Irvington Board of Education (“IBOE”) on August 4, 2021. The Complainant noted that the Custodian subsequently responded advising that her request was on the wrong form, which she acknowledged, and that responsive records were exempt from disclosure. The Complainant stated that the IBOE subsequently denied access to the August 18, 2021 OPRA request seeking the same personnel information regarding Ms. Coleman.

The Complainant asserted that the Custodian unlawfully denied her access to the information sought in her OPRA requests, which classified as “payroll” information subject to disclosure under OPRA. N.J.S.A. 47:1A-10. The Complainant noted that if Ms. Coleman did not work either of those days, she “did not need to know why.” The Complainant noted that she sought guidance from the GRC prior to filing this complaint and received a response that she believes affirmed her position. See Jackson, GRC 2002-98; Gordon, GRC 2013-189.

Supplemental Responses:

On August 24, 2021, Ms. van Baaren responded in writing to the Complainant’s August 21, 2021 OPRA request on behalf of the Custodian. Therein, Ms. van Baaren disclosed five (5) pages of “payroll” records and noted that certain personal identifying information was redacted in accordance with N.J.S.A. 47:1A-1. Ms. van Baaren noted that the records were being disclosed as they exist and any attendance information not contained within is exempt from access under N.J.S.A. 47:1A-10. On the same day, the Complainant responded disputing the response and arguing that IBOE continued to deny access to attendance records. The Complainant again noted that she was not concerned with whether Ms. Coleman was out for some reason, simply whether she was in attendance on those days. The Complainant thus asked whether IBOE was denying access so that she may amend the instant complaint.

Later on August 24, 2021, Ms. van Baaren responded advising that she provided all records that existed. Ms. van Baaren further asserted that although attendance records “may” be disclosable as “payroll” records, the word “may” is key in determining disclosure. Ms. van Baaren further noted that relevant retention schedules only require school districts to maintain “subsidiary ledgers, such as attendance,” for six (6) years; the records in question are over eight (8) years old.

Amended Denial of Access Complaint:

On August 31, 2021, the Complainant filed an Amended Denial of Access Complaint with the GRC.⁴ The Complainant stated that she wished to amend the instant complaint to include consideration of whether IBOE also unlawfully denied access to her August 21, 2021 OPRA request. The Complainant noted that while she received “payroll” information, she still has not received attendance records. The Complainant further refuted that Ms. Coleman’s attendance

⁴ The Complainant originally filed the amended complaint on August 26, 2021; however, the GRC returned same because it did not include the required “Amended Denial of Access Complaint” form.

records could have been destroyed in accordance with the State's Records Retention Schedules, which allow for destruction six (6) years after termination, because she is still employed by IBOE.

Supplemental Response:

On September 8, 2021, Ms. van Baaren e-mailed the GRC and Complainant stating that she was disclosing "the only remaining attendance records not already turned over the Complainant." Ms. van Baaren noted that all other dates on the record, a 2013 "Employee Attendance Calendar" for Ms. Coleman, not sought by the Complainant were redacted. Ms. van Baaren finally asserted that this disclosure should "alleviate" the issues in this complaint and she anticipates the Complainant will be withdrawing it. On September 28, 2021, Ms. van Baaren e-mailed the parties again asserting that all responsive records were provided and that either the Complainant can advise if any records remain outstanding or withdraw the instant complaint. On September 29, 2021, the Complainant contended that the disclosed record was insufficient and did not include the physical hours worked.

On September 30, 2021, Ms. van Baaren responded stating that the record provided is the record sought. Ms. van Baaren noted that there are codes regarding days off included on the record; the absent of any code in the calendar for those two (2) days means that Ms. Coleman was at work. Ms. van Baaren further noted that because Ms. Coleman is a classroom teacher, she would have been in attendance from 8:30 a.m. to 4:30 p.m. Ms. van Baaren further noted that the other payroll records disclosed identify that Ms. Coleman worked for the after-school program on those days. Ms. van Baaren apologized to the extent that the disclosed record was incomprehensible to the Complainant, but that this clarification should assist her in determining whether she sought any additional records.

On October 2, 2021, the Complainant e-mailed Ms. van Baaren asking whether she could place the September 30, 2021 explanation of the attendance record on official letterhead, to which Ms. van Baaren agreed on October 3, 2021. On October 4, 2021, Ms. van Baaren sent a letter (on Firm letterhead) to the Complainant memorializing the information contained in her September 30, 2021 e-mail, but noting that Ms. Coleman would have been in the classroom from 8:30 a.m. to 2:30 p.m. and likely present until 5:00 p.m. at the after-school program. Later that day, the Complainant e-mailed Ms. van Baaren disputing the response due to an inconsistency in attendance times from her e-mail to the subsequent letter. The Complainant noted that the IBOE's Handbook stated that teachers were released at 3:05 p.m. during the 2012-2013 school year. The Complainant also noted that she had family that attend the school, and even one that was a teacher there in 2013 who confirmed that teachers reported at 8:25 a.m. and left at 3:05 p.m. at the earliest. The Complainant thus asked Ms. van Baaren to provide the exact hours Ms. Coleman worked both in her classroom and with the after-school program on the two (2) dates in question.

Statement of Information:

On October 4, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that the Complainant's August 19, 2021 OPRA request "was not made on the requisite form" and that the Complainant cured same on August 21, 2021 which he received on

the same day.⁵ The Custodian certified that Ms. van Baaren responded in writing on August 24, 2021 disclosing five (5) pages of payroll records with minor redactions. The Custodian certified that Ms. van Baaren subsequently disclosed a heavily redacted copy of the 2013 “Employee Attendance Calendar” for Ms. Coleman on September 8, 2021 and later clarified same on September 30, 2021. The Custodian also noted that the Complainant appeared to seek access to Ms. Coleman’s time sheets for April 22, and 30, 2013, “although they were not specifically request (sic)” but that IBOE only maintains time sheets for seven (7) years. The Custodian further asserted that those records were kept in the basement that incurred a flood; those records damaged were destroyed.

The Custodian argued that he properly complied with the Complainant’s OPRA request by disclosing responsive records and the instant complaint is now moot. The Custodian asserted that the Complainant believes some additional records responsive to her request exist but failed to indicate same. The Custodian certified that no additional records exist related to Ms. Coleman’s attendance beyond those disclosed.

Additional Submissions:

Later on October 4, 2021, Ms. van Baaren responded to the Complainant acknowledging dissatisfaction with IBOE’s responses. Ms. van Baaren noted that if the Complainant needed information on after-school program than she could submit a new OPRA request.

On October 7, 2021, the Complainant responded objecting that she needed to file a new OPRA request; the after-school program encompassed part of the workday and applies to the subject OPRA request. On the same day, Ms. van Baaren responded to the Complainant stating that no payroll record indicates the dates that Ms. Coleman worked the after-school program. Ms. van Baaren further asserted that the Complainant appeared to be asking her to create new records, which is not required under OPRA. Ms. van Baaren noted that she spoke with IBOE’s Business Administrator who confirmed that in 2013, a regular workday was from 8:25 a.m. to 2:52 p.m. and the after-school program operated from 3:05 p.m. to 4:00 p.m. Ms. van Baaren reasserted that she did not know, and will not assume, whether Ms. Coleman worked the program on the days in question. Ms. van Baaren subsequently sent workday information to the Complainant on the Firm’s letterhead. Later on the same day, the Complainant again refuted the information provided as inconsistent and that she did not know Ms. Coleman worked the after-school program until Ms van Baaren “sent information about” same. The Complainant noted that Ms. van Baaren now had the ability “ask someone” and posited that it came from “that electronic HR system.” The Complainant reaffirmed that she sought attendance records for the days in question and could not understand why IBOE was “fighting so hard” against disclosure.

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

⁵ The Custodian did not address the Complainant’s August 4, 2021 OPRA request as part of the SOI.

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 provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581 (2011). These include “an individual’s name, title, position, salary [and] *payroll record*.” Id. (emphasis added). See also Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004) (defining a “payroll record” for purposes of OPRA as records relating to payment of a public employee). Further, the Council has previously required that responding to an OPRA request for personnel information requires that a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015). However, the Council has also held that an agency was not required to potentially responsive information to an electronic record where it otherwise does not exist. See Matthews, Jr. v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009).

Moreover, the Council has repeatedly ordered disclosure of payroll records. For instance, in Roarty v. Secaucus Bd. of Educ. (Hudson), GRC Complaint No. 2009-221 (January 2011) the complainant sought access to, among other records, accumulated sick time. The Council applied its analysis in Jackson, GRC 2002-98 and determined that the requested sick time was a payroll record subject to disclosure. Id. at 9-10.

As to the disclosability of attendance records, the Council has routinely required disclosure of same under the “payroll record” exception in N.J.S.A. 47:1A-10. See *e.g.* Burdick v. Franklin Twp. Bd. of Educ. (Hunterdon), GRC Complaint No. 2007-74 (Interim Order dated October 31, 2007); Vargas (O.B.O. Philadelphia Inquirer) v. Camden City Sch. Dist. (Camden), GRC Complaint No. 2011-315 (Interim Order dated January 29, 2013); Vandy v. Burlington Cnty. Bd of Social Servs., GRC Complaint No. 2016-319 (November 13, 2018). However, the GRC does note that certain types of time records may contain sensitive or otherwise exempt information that could be redacted. In Barker v. Borough of Lakehurst (Ocean), GRC Complaint No. 2015-26 (Interim Order dated Interim Order dated March 28, 2017), the Council required disclosure of handwritten time sheets, but noted that “it is plausible that certain entries on an officer’s handwritten time sheet might contain sensitive or otherwise exempt information.” Id. at 7. The Council thus directed the custodian to redact any information falling within an exemption and provide a specific lawful basis for it. Id.

In the instant complaint, the Complainant submitted three (3) separate OPRA requests attempting to obtain Ms. Coleman’s specific hours worked on April 22, and 30, 2013. The first two (2) OPRA requests sought the specific start and end time, while the third OPRA request sought attendance records related for those days. In each instance, IBOE denied the requests under

N.J.S.A. 47:1A-10⁶ and the Complainant disputed the lawfulness of each. Notwithstanding each denial, IBOE ultimately disclosed multiple records to the Complainant after her filing of the original and amended Denial of Access Complaint. The first set of records disclosed on August 24, 2021, and in response to August 21, 2021 OPRA request, identified hours worked and payments made to Ms. Coleman for both her role as a teacher and after-school worker covering the dates included in the request. IBOE subsequently disclosed an “Employee Attendance Calendar” for 2013 containing redactions of all days except those on or around the two (2) dates identified by the Complainant; the record did not include a start and end time. IBOE also asserted for the first time that potentially responsive records exceeded applicable retention schedules. IBOE stated that it considered the issue settled and that the Complainant should withdraw her complaint.

Following these disclosures, however, the parties continued to communicate regarding the lack of an end and start time for the two (2) dates. IBOE provided a speculative start and end times, which the Complainant sought to be memorialized on letterhead; she later disputed that memorialization because it was inconsistent. Shortly thereafter, the Custodian certified in the SOI that he disclosed those records that existed, asserted for the first time that potentially responsive records may have been destroyed in a flood, and argued that this complaint was moot. Thereafter, IBOE and the Complainant continued to disagree about the disclosure or possible existence of Ms. Coleman’s start and end times.

Initially, the GRC’s case law is clear that attendance records reasonably fall within the definition of a “payroll record” and are disclosable under OPRA. N.J.S.A. 47:1A-10; Burdick, GRC 2007-74. Further, the GRC’s case law supports that attendance records may be redacted if genuinely exempt information is contained therein; however, OPRA does not contain an exemption allowing for redaction of information deemed not responsive to an OPRA request. Barker, GRC 2015-26; ACLU v. N.J. Div. of Criminal Justice, 435 N.J. Super. 533 (App. Div. 2014). IBOE’s arguments that the responsive “payroll records” disclosed after the filing of this complaint could be denied under the N.J.S.A. 47:1A-10 or that salaried and hourly employee classifications differentiate the disclosure of attendance records is erroneous. For this reason, the GRC is persuaded that at least a basic denial of access to the Complainant’s OPRA requests occurred.

Notwithstanding the above, it is clear from the numerous communications between the parties that the information at issue in this complaint is the exact times that Ms. Coleman worked on April 22, and 30, 2013. That is, the first two (2) OPRA requests and additional conversation between the parties have developed the record here to clearly indicate that the Complainant submitted each OPRA request in pursuit of this information. The parties also engaged in a lengthy disagreement over the start and end times provided by IBOE, both informally and on official Firm letterhead. However, the Custodian certified in the SOI that no record containing the exact start and end times existed.

⁶ The GRC notes that it will not address the Custodian’s assertion that the August 4, 2021 OPRA request was on “the wrong form” because he ultimately denied access on other bases. The GRC does note however that in Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies’ OPRA request forms for making requests, no custodian shall withhold such records if the written request is not presented on the official form. The written request shall include the requisite information prescribed in N.J.S.A. 47:1A-5(f). Id. Therefore, requestors may submit a request not on an official form as long as it sufficiently invokes OPRA.

In addressing the hours worked issue, the GRC notes that IBOE would not have been required to add or otherwise create a new record containing same to the extent that it did not already exist in a physical or electronic record. Matthews, Jr., GRC 2008-123. Thus, either the times existed on a record and could be disclosed, or they did not exist and the records provided are the records responsive to the Complainant's OPRA requests. The evidence of record here strongly supports the non-existence of Ms. Coleman's specific hours worked in any disclosable record. The GRC arrives at this conclusion based on the records disclosed, the multitude of conversations between the parties, Ms. van Baaren's attempts to present potential start and end times, and the Custodian's SOI certification. Additionally, Ms. van Baaren was not required to ascertain those times verbally from IBOE and place them on any official document.

Accordingly, the Custodian unlawfully denied access to the requested attendance records sought by the Complainant in her OPRA requests. N.J.S.A. 47:1A-6. Specifically, attendance records clearly fall within the definition of a "payroll record" and are disclosable under OPRA. N.J.S.A. 47:1A-10; Burdick, GRC 2007-74. Notwithstanding this denial, the GRC declines to order disclosure because same occurred on August 24, 2021 and September 8, 2021 respectively. However, the Custodian did not unlawfully deny to Ms. Coleman's specific start and end times on April 22, and 30, 2013 because the evidence of record supports that there is no comprehensive record containing same; the Custodian is not required to include same in an already existent record to satisfy the subject OPRA requests. Matthews, Jr., GRC 2008-123.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, the Custodian unlawfully denied access to the requested attendance records, which fall firmly within the definition of a “payroll record.” N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. However, the Custodian did not unlawfully deny access to the specific hours worked because the evidence of record supports that no comprehensive records containing same existed. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the requested attendance records sought by the Complainant in her OPRA requests. N.J.S.A. 47:1A-6. Specifically, attendance records clearly fall within the definition of a “payroll record” and are disclosable under OPRA. N.J.S.A. 47:1A-10; Burdick v. Franklin Twp. Bd. of Educ. (Hunterdon), GRC Complaint No. 2007-74 (Interim Order dated October 31, 2007). Notwithstanding this denial, the GRC declines to order disclosure because same occurred on August 24, 2021 and September 8, 2021 respectively. However, the Custodian did not unlawfully deny to Ms. Coleman’s specific start and end times on April 22, and 30, 2013 because the evidence of record supports that there is no comprehensive record containing same; the Custodian is not required to include same in an already existent record to satisfy the subject OPRA requests. Matthews, Jr. v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009).

2. The Custodian unlawfully denied access to the requested attendance records, which fall firmly within the definition of a “payroll record.” N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. However, the Custodian did not unlawfully deny access to the specific hours worked because the evidence of record supports that no comprehensive records containing same existed. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

September 22, 2022