



State of New Jersey

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Commissioner

FINAL DECISION

August 27, 2024 Government Records Council Meeting

Marcus L. Kirchenbaum
Complainant

v.

Wall Township Public Schools (Monmouth)
Custodian of Record

Complaint No. 2022-259

At the August 27, 2024, public meeting, the Government Records Council (“Council”) considered the August 20, 2024, 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 Complainant’s February 14, 2022 request seeking a “list of consulting professionals” is invalid because it sought information and would have required research and the creation of a record. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Turner v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-176 (January 2011). Further, the Complainant’s April 11, 2022 requests seeking “[n]ames of” law and accounting firms, “rate of pay,” “amount paid in 2020 and 2021,” and “billable hours list” are invalid because they sought information regarding the District’s law and accounting firms and would have required research and/or creation of a record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; LaMantia, GRC 2008-140. Thus, the Custodian lawfully denied access to these requests because they were invalid. N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to any record responsive to the Complainant’s March 22, 2022 OPRA request because he certified, and the record reflects, that he disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, et seq. (Interim Order dated April 28, 2010).

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 August 2024

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: August 29, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 27, 2024 Council Meeting**

**Marcus L. Kirchenbaum¹
Complainant**

GRC Complaint No. 2022-259

v.

**Wall Township Public Schools (Monmouth)²
Custodial Agency**

Records Relevant to Complaint:

February 14, 2022 OPRA request: Hardcopies via pick-up of a list of “consulting professionals” for the Wall Township School District (“District”) including rates of pay and job descriptions in 2020 and 2021.

March 22, 2022 OPRA request: Hardcopies via pick-up of a list of District employees including title, pay amount (by salary or hourly rate) and amount paid in 2020.

April 11, 2022 OPRA requests: Hardcopies via pick-up of:

1. “[N]ame of [District] law firm – rate of pay – amount paid in 2020 and 2021. Also billable hours list.”
2. “[N]ame of [District] accounting firm – rate of pay – amount paid in 2020 - and 2021. Also billable hours list.”

Custodian of Record: Brian J. Smyth

Request Received by Custodian: February 14, 2022; March 22, 2022; April 11, 2022

Response Made by Custodian: February 25, 2022; March 31, 2022; April 28, 2022

GRC Complaint Received: June 8, 2022

Background³

Request and Response:

On February 14, 2022, the Complainant submitted the first (1st) Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 25, 2022,

¹ No legal representation listed on record.

² No legal representation listed on record.

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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the Custodian responded in writing stating that no responsive records exist. The Custodian noted that he was attaching District meeting agendas for April, May, June, and July of both 2019 and 2020. The Custodian stated that annual consulting professionals were typically approved for the upcoming school years at those meetings. The Custodian also noted that other consultants may be approved for services throughout the year and that all minutes can be viewed on the District website. The Custodian finally stated that the Complainant may clarify his OPRA request if the attached records did not satisfy same.

On March 22, 2022, the Complainant submitted the second (2nd) Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 31, 2022, the Custodian responded in writing stating that he was disclosing a payroll report covering January 15, 2020 through December 23, 2020.

On April 11, 2022, the Complainant submitted the third (3rd) and fourth (4th) OPRA requests to the Custodian seeking the above-mentioned records. On April 28, 2022, the Custodian responded in writing separately to each OPRA request stating that they were invalid because they sought information rather than an identifiable “government record.” 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). The Custodian stated that in an attempt to disclose records containing the information sought, he was disclosing “Vendor Analysis” reports for two (2) law firms and the accounting firm for 2020, 2021, and 2022. The Custodian noted that the District did not maintain “billable hours lists” for law firms, but that he could disclose invoices within an extended time period of May 12, 2022. The Custodian also noted that the District did not maintain a “billable hours list” for accounting firms because they do not bill hourly to perform audits.

Denial of Access Complaint:

On June 8, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian either unlawfully denied access to his OPRA requests or disclosed records that did not contain the information sought.

Regarding the February 14, 2022 OPRA request, the Complainant contended that, instead of providing a list of consultants, the Custodian disclosed minutes and told him to go to the District website. The Complainant argued that he showed the District a copy of Wall Township’s (“Township”) “Authorization to Appoint the Township Consulting Professionals” (“Authorization”)⁴ and was told that no such list was made or maintained. The Complainant asserted that he disputed the response at an April 26, 2022 District meeting, at which point the Custodian responded again directing him to the website. The Complainant asserted that he was not good with computers and did not seek electronic delivery of the records.

Regarding the March 22, 2022 OPRA request, the Complainant confirmed that he received the payroll report. The Complainant stated that the Custodian told him that every employee on the

⁴ The Complainant did not include a copy of this document as an attachment to the Denial of Access Complaint. Marcus L. Kirschenbaum v. Wall Township Public Schools (Monmouth), 2022-259 – Findings and Recommendations of the Executive Director

list gets a paycheck as a “regular employee” and it did not include consultants or “part[-]time [p]professionals like the attorney, accountant[,] ” *etc.*”

Regarding the April 11, 2022 OPRA requests, the Complainant disagreed that either OPRA request sought information rather than documents. The Complainant stated that he received the vendor reports, which included the names of each law firm and accounting firm but not the hourly rate. The Complainant noted that the Custodian offered to disclose attorney billing records, which he rejected due to cost. The Complainant further noted that he did not understand the accounting firm report disclosed to him.

Finally, the Complainant argued that the District was “hiding information” from the public in an attempt to cover up a significant increase in the 2022-2023 budget. The Complainant argued that he sought to use OPRA to understand how the District spent taxpayer money, and was given the “runaround.”

Statement of Information:

On June 22, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s first (1st) OPRA request on February 14, 2022. The Custodian affirmed that his search yielded no responsive records; thus, he attempted to provide records that contained the information sought. The Custodian affirmed that he responded in writing on February 25, 2022, disclosing meeting agendas wherein annual appointments for professional consultants would be approved. The Custodian noted that he also asked the Complainant to provide clarification if the disclosed records were not satisfactory.

The Custodian certified that he received the Complainant’s second (2nd) OPRA request on March 22, 2022. The Custodian affirmed that his search included obtaining a wage report including the requested personnel information. The Custodian affirmed that he responded in writing on March 31, 2022 disclosing the wage report to the Complainant.

The Custodian certified that he received the Complainant’s third (3rd) and fourth (4th) OPRA requests on April 11, 2022. The Custodian affirmed that his search yielded no responsive records; thus, he again attempted to provide records that contained the information sought. The Custodian affirmed that he responded in writing on April 28, 2022, disclosing “Vendor Analysis” reports and noting that “billable hours” lists did not exist. The Custodian affirmed that he offered the Complainant copies of the attorney bills and Complainant declined.

The Custodian contended that the Complainant’s February 14, 2022 OPRA request was invalid because it failed to identify a responsive record and would require him to create a record to fulfill same. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent, 381 N.J. Super. at 37; N.J. Builder, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian contended that he attempted to assist the Complainant by providing the agendas for those meetings where the District made its annual professional consultant appointments for the identified school years. The Custodian also noted that the Complainant did not avail himself of the offer to further clarify the OPRA request.

The Custodian further argued that he believed he disclosed the record responsive to the Complainant's March 22, 2022 OPRA request. The Custodian noted that he could not determine from the Denial of Access Complaint the basis of the Complainant's allegations of an unlawful denial.

The Custodian additionally contended that the Complainant's April 11, 2022 OPRA requests were invalid because they sought information rather than documents. Bent, 381 N.J. Super. at 37; N.J. Builder, 390 N.J. Super. at 180. The Custodian maintained that he was not required to create records or conduct research to fulfill either OPRA request. The Custodian noted that to assist the Complainant, he disclosed "Vendor Analysis" reports for two (2) law firms and one (1) accounting firm for the identified school years. The Custodian noted that those reports contained the names of both firms, each payment made thereto, and the total amount paid each year. The Custodian certified that the District did not keep "billable hours" lists for the law firms but he offered individual attorney's bills, which the Complainant rejected. The Custodian further certified that no "billable hours" list for the accounting firm existed because it did not bill by hour when conducting annual audits.

Finally, the Custodian asserted that the Complainant visited District offices to discuss his various OPRA requests; however, "difficulties" were encountered in trying to narrow them. The Custodian also asserted that the Complainant did not show him the Township's Authorization pertaining to the February 14, 2022 OPRA request. The Custodian claimed that the Complainant did not have the Authorization with him when they met in-person to discuss his OPRA request and did not leave a copy thereof for review although requested by a District staff member.

Additional Submissions:

On July 6, 2022, the Complainant submitted a sur-reply. Therein, the Complainant alleged that the Custodian erroneously argued that he was not shown the Township's Authorization. The Complainant attached a copy of the Township's Authorization (hereafter "Resolution No. 21-0107") and argued that he did show it to the Custodian. The Complainant asserted that the Custodian verbally alleged that it must have been created for him. The Complainant contended that the Custodian made false statements in the SOI and should be held accountable for those statements per N.J. Court Rules, R. 1:4-4.⁵

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

⁵ The GRC notes that both parties included arguments alleging adverse personal interactions during their in-person meetings. While the GRC notes that the spirit of OPRA fosters a cooperative relation between a requestor and custodian, there are no provisions setting a standard for professional conduct. For this reason, and given the hearsay nature of the allegations, the GRC cannot address these arguments as same are outside its authority. N.J.S.A. 47:1A-7.

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While 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.*

[MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[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). Bent, 381 N.J. Super. 30;⁶ N.J. Builders, 390 N.J. Super. 166; Schuler, GRC 2007-151.

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

In LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant’s request was a request for information, holding that, “. . . because request Item No. 2 of the Complainant’s June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004). Marcus L. Kirschenbaum v. Wall Township Public Schools (Monmouth), 2022-259 – Findings and Recommendations of the Executive Director

[MAG] . . .” Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

Additionally, in Turner v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-176 (January 2011), the complainant sought, among other things, two lists containing certain types of information without a specified time frame. The custodian initially responded stating that access could be provided to those lists; however, she argued in the SOI that request items were invalid (citing Herron v. Twp. of Montclair (Essex), GRC Complaint No. 2008-46 (April 2009)). The Council ultimately held that the custodian lawfully denied access to the items. In reaching this conclusion, the Council looked to its prior decision in Shain v. Ocean Cnty. Bd. of Taxation, GRC Complaint No. 2007-127 (November 2007) (holding that a request for a “list” containing certain information failed to identify a specific record). See also Wailoo v. Kean Univ., GRC Complaint No. 2016-301 (October 2018) (holding that a request for a “list of disciplinary consultants” for a two (2) year period sought information and was invalid).

Here, the Complainant’s February 14, 2022 OPRA request sought a “list of ‘consulting professionals’ . . . including rates of pay and job descriptions in 2020 and 2021.” The Custodian responded advising that no list existed and disclosing a series of 2019 and 2020 minutes he asserted included consultant approvals. The Custodian further noted that because consultants may be approved throughout the school year, the Complainant could review additional minutes on the District’s website. The Custodian finally stated that the Complainant could clarify his OPRA request if the disclosure was unsatisfactory.

Moreover, the Complainant’s April 11, 2022 OPRA requests sought the names of law and accounting firms that the District contracted with, their rate of pay, amount paid in 2020 and 2021, and “billable hours list.” The Custodian responded stating that the request was invalid because it sought information rather than documents. However, the Custodian disclosed a vendor report for two (2) law firms and an accounting firm showing a list of payments and the totals for each identified year. The Custodian further noted that no “billable hours lists” existed for the firms, but that he could disclose attorney’s bills. The Complainant declined this offer.

This complaint followed, wherein the Complainant alleges he was unlawfully denied access to records sought in all three (3) OPRA requests.

Regarding the February 14, 2022 OPRA request, the Complainant argued that, during an in-person meeting, he showed the Custodian a copy of Resolution No. 21-0107, and yet no comparable record was disclosed to him. Regarding the April 11, 2022 OPRA requests, the Complainant contended that he did not receive any hourly rates and was confused by the record produced for the accounting firm. In the SOI, the Custodian maintained that all three (3) requests were invalid because they failed to identify any specific records and instead sought information that would require him to create records. The Custodian noted that he nonetheless attempted to assist the Complainant by disclosing minutes and reports. The Custodian also contended that the Complainant did not show him Resolution No. 21-0107. The Complainant submitted a sur-reply alleging that the Custodian falsely stated that he was not shown the resolution.⁷

⁷ The GRC notes that it cannot rectify the hearsay dispute between the parties over whether the Complainant showed the Custodian a copy of Resolution No. 21-0107.
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Upon review of the items above, the GRC is compelled to find that all three (3) OPRA requests were invalid because they sought information. Regarding the February 14, 2022 OPRA request, it is similar to the request at issue in Turner, GRC 2009-176, and thus the GRC must hold accordingly. It should be noted also that there is no evidence in the record to suggest that the District maintained a list containing the information sought, whether electronically or otherwise. Further, Resolution No. 21-0107 does not provide competent credible evidence that such a list exists as same was produced by the Township and not the District. The existence of a Township resolution encompassing all professional consultants does not indicate that the District similarly created such a record.

Regarding the April 11, 2022 requests, those portions seeking the names of firms, pay rates, total amounts paid would have required the Custodian to siphon information from various records, or in the alternative conduct research to determine which records may contain the information in question. See LaMantia, GRC 2008-140. In fact, the Custodian did attempt to disclose a record containing the information sought and was countered with this complaint alleging a failure to provide certain information.

To briefly address the billable hours lists portion of the requests, said term could be interchangeable with detailed invoices provided by professional services. However, the fact that the GRC would have to surmise what records could match the term “billable hours lists,” and absent any indication that the District maintained such information in a readily available list, provides support that it was also invalid as a request for information. It should be noted that, notwithstanding the forgoing, the Custodian offered attorney’s bills to the Complainant, which he declined, and also certified that accounting firms did not bill by hour.

Accordingly, the Complainant’s February 14, 2022 request seeking a “list of consulting professionals” is invalid because it sought information and would have required research and the creation of a record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; LaMantia, GRC 2008-140; Turner, GRC 2009-176. Further, the Complainant’s April 11, 2022 requests seeking “[n]ames of” law and accounting firms, “rate of pay,” “amount paid in 2020 and 2021,” and “billable hours list” are invalid because they sought information regarding the District’s law and accounting firms and would have required research and/or creation of a record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; LaMantia, GRC 2008-140. Thus, the Custodian lawfully denied access to these requests because they were invalid. N.J.S.A. 47:1A-6.

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 Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, et seq. (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided

to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, et seq. (March 2015).

Here, the Complainant's March 22, 2022 OPRA request sought "a list of District employees including title, pay amount (by salary or hourly rate) and amount paid in 2020." The Custodian responded providing a payroll report covering January 15, 2020 through December 23, 2020. That report was comprised of employee names, their "department," and a wage breakdown by pensionable, non-pensionable, and gross pay. This complaint followed, where the Complainant raised the issue that the disclosed report showed all "regular" employees and did not include consultants or "part[-]time [p]rofessionals" In the SOI, the Custodian stated that he could not determine the claim being raised by the Complainant.

Upon review, it appears the Complainant is challenging the absence of consultants or contracted professionals, such as the District's attorneys and accountants, on the disclosed wage list. The Complainant's assertion indicates a misunderstanding of employment relationships, as he requested information on "employees" rather than individuals with whom the District engages in professional contracted services.. Those individuals are arguably employees of the entities with which the District has contracted and not the District itself. See Owoh, Esq. (O.B.O. O.R.) v. West Windsor Plainsboro Sch. Dist. (Mercer), GRC Complaint No. 2014-16, et seq. (September 2014) (holding that the personnel records of a "third party vendor[]" are not considered "government records" for purposes of OPRA). Thus, it would be reasonable to assume that those individuals would not be included in a report specific to District employee pay information. Based on the forgoing, the wage report disclosed to the Complainant appears to be the responsive record because it includes all *employees* of the District.

Accordingly, the Custodian did not unlawfully deny access to any record responsive to the Complainant's March 22, 2022 OPRA request because he certified, and the record reflects, that he disclosed all records that existed. Danis, GRC 2009-156, et seq.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's February 14, 2022 request seeking a "list of consulting professionals" is invalid because it sought information and would have required research and the creation of a record. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Turner v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-176 (January 2011). Further, the Complainant's April 11, 2022 requests seeking "[n]ames of" law and accounting firms, "rate of pay," "amount paid in 2020 and 2021," and "billable hours list" are invalid because they sought information regarding the District's law and accounting firms and would have required research and/or creation of a record. MAG, 375 N.J. Super. at 546; Bent, 381

N.J. Super. at 37; LaMantia, GRC 2008-140. Thus, the Custodian lawfully denied access to these requests because they were invalid. N.J.S.A. 47:1A-6.

2. The Custodian did not unlawfully deny access to any record responsive to the Complainant's March 22, 2022 OPRA request because he certified, and the record reflects, that he disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, et seq. (Interim Order dated April 28, 2010).

Prepared By: Frank F. Caruso
Executive Director

August 20, 2024