

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 23, 2010 Council Meeting**

John Paff¹
Complainant

GRC Complaint No. 2009-55

v.

Barrington School District (Camden)²
Custodian of Records

Records Relevant to Complaint:

1. Settlement agreement with plaintiffs “O.H. parent of C.F.” and “L.M. parent of B.E.” in Several Students v. Barrington Board v. Morgenroth, Federal Court Docket 05cv5377.
2. Any court order that seals the settlement agreements listed above or otherwise exempts said agreements from public access.

Request Made: December 31, 2008 and January 21, 2009

Response Made: April 1, 2009

Custodian: Tony Mack³ and Carol Anne Visalli⁴

GRC Complaint Filed: February 23, 2009⁵

Background

December 31, 2008

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

January 21, 2009

Complainant re-submits his OPRA request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

February 23, 2009

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

¹ Represented by Walter M. Luers, Esq., of Law Offices of Walter M. Luers, LLC (Oxford, NJ).

² Represented by Ronald W. Sahli, Esq., of Sahli & Padovani (Hammonton, NJ).

³ The Custodian at the time of the Complainant’s first OPRA request dated December 31, 2008.

⁴ The Custodian at the time of the Complainant’s second OPRA request dated January 21, 2009.

⁵ The GRC received the Denial of Access Complaint on said date.

- Complainant's OPRA request dated December 31, 2008, with transmittal e-mail attached.
- Complainant's re-submitted OPRA request dated January 21, 2009, with fax confirmation page attached.

The Complainant states that he submitted his OPRA request on December 31, 2008 via e-mail. The Complainant states that he did not receive any response to said request and thus re-submitted said request via facsimile on January 21, 2009. The Complainant states that he again received no response to his OPRA request. The Complainant states that he left the Custodian a voicemail message on February 4, 2009 and to date has not received any response.

The Complainant states that pursuant to N.J.S.A. 47:1A-5.i., a custodian must respond to an OPRA request as soon as possible but not later than seven (7) business days following receipt of said request. The Complainant states that N.J.S.A. 47:1A-5.i. also provides that a custodian's failure to respond during said time frame results in a "deemed" denial of the OPRA request. The Complainant asserts that because the Custodian failed to provide a written response to his OPRA request within the statutorily mandated seven (7) business days, the Custodian violated OPRA. See Cottrell v. Borough of Glassboro, GRC Complaint No. 2005-247 (April 2006).

Additionally, the Complainant requests that the Council order the Custodian to disclose the requested record to the Complainant and find that the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6.

Further, the Complainant does not agree to mediate this complaint.

March 18, 2009

Request for the Statement of Information ("SOI") sent to the Custodian.

March 25, 2009

Custodian's SOI with the Complainant's OPRA request attached. The Custodian states that she received a telephone call from the Complainant on January 21, 2009, the Custodian's first (1st) day on the job, in which the Complainant indicated that he had submitted an OPRA request to the former Business Administrator via e-mail and had not received a response to said request. The Custodian certifies that she advised the Complainant to re-submit his OPRA request via facsimile. The Custodian certifies that upon receipt of said OPRA request on January 21, 2009, the Custodian forwarded said request to the Interim Superintendent, who began employment on January 5, 2009. The Custodian states that the Interim Superintendent forwarded the Complainant's OPRA request to the Board of Education's ("BOE") Solicitor.

The Custodian certifies that while awaiting advice on how to proceed with this request from the Solicitor, the Custodian searched the BOE's files within the Business Office and Superintendent's Office to locate the requested settlement agreement. The Custodian certifies that she located correspondence referring to the case requested, but

did not locate any judgment or any court order relating to the case. The Custodian certifies that the requested settlement agreement is not maintained by the BOE.

The Custodian also certifies that when she received this Denial of Access Complaint, she realized that the Solicitor had not responded to the OPRA request as the Custodian anticipated. The Custodian certifies that she then decided to contact New Jersey School Boards Association Insurance Group, the BOE's insurance agent. The Custodian certifies that she learned the insurance group had hired counsel to defend the BOE in the case which is the subject of this complaint. The Custodian states that this insurance group may be in possession of the requested settlement agreement, but the Custodian is unsure whether she is obligated to request records from other agencies pursuant to an OPRA request.

Additionally, the Custodian certifies that she did not respond to the Complainant's OPRA request because said request involved minor students and a former teacher and thus, the Custodian forwarded said request to the Solicitor for a response.

The Custodian also certifies that to her knowledge, no records that may have been responsive to the Complainant's OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

April 1, 2009

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the forty-eighth (48th) business day following receipt of such request. The Custodian states that although the BOE was not in possession of the requested records at the time of the Complainant's OPRA request, the Custodian states that the BOE has since obtained said record from the attorney of record in the federal lawsuit.

The Custodian states that two (2) settlement agreements are enclosed with redactions of the full names of the students and their parents pursuant to N.J.S.A. 47:1A-9.b., 20 U.S.C. Sec. 1232g(a) and (b), 34 C.F.R. Sec. 99.30, N.J.S.A. 18A:36-19 and N.J.A.C. 6:6-6.1 et. seq.

October 9, 2009

The Complainant's response to the Custodian's SOI. The Complainant asserts that a custodian cannot delegate her duties to respond to OPRA requests. The Complainant states that while it appears that the requested record was in the possession of the BOE's outside counsel, the Custodian was obligated to obtain said record from Counsel.

Additionally, the Complainant states that the Custodian provided no explanation why it took four (4) months to obtain the requested record from outside counsel. The Complainant states that the Council held in Schuler v. Borough of Bloomsbury (Hunterdon), GRC Complaint No. 2007-151 that records located at the Borough Engineer's office were government records subject to public access because said records related to work the Engineer performed on behalf of the Borough.

The Complainant also states that because the effective date of both settlement agreements is December 17, 2007, prior to the Complainant's OPRA requests, the Custodian cannot claim that said agreements did not exist at the time of the Complainant's OPRA requests. Further, the Complainant asserts that his Denial of Access Complaint was the catalyst for the Custodian to release the requested records and thus, the Complainant should be entitled to an award of prevailing party attorney's fees.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides that:

"[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to [OPRA], the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record." N.J.S.A. 47:1A- 5.g.

OPRA further provides that:

"[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request...*(Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

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.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.⁶ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

The Complainant stated that he submitted his first OPRA request on December 31, 2008 via e-mail to the original Custodian. The Complainant stated that he received no response to said OPRA request. The Complainant stated that he re-submitted his OPRA request via facsimile to the current Custodian on January 21, 2009. The current Custodian certified that upon receipt of said OPRA request on January 21, 2009, her first (1st) day on the job, the Custodian forwarded said request to the Interim Superintendent, who began employment on January 5, 2009. The Custodian states that the Interim Superintendent forwarded the Complainant’s OPRA request to the BOE’s Solicitor.

Therefore, the original Custodian’s failure to respond to the Complainant’s first (1st) OPRA request dated December 31, 2008 in writing either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, supra.

Further, in Paff v. Bergen County Prosecutor’s Office, GRC Complaint No. 2005-115 (March 2006), the Council held that “[w]hile seeking legal advice on how to appropriately respond to a records request is reasonable, it is not a lawful reason for delaying a response to an OPRA records request because the Custodian should have obtained a written agreement from the Complainant extending the time period to respond.”

⁶ It is the GRC’s position that a custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

Similarly in this instant complaint, the Custodian certified that she forwarded the Complainant's OPRA request dated January 21, 2009 to the Interim Superintendent who in turn forwarded the request to the BOE Solicitor for a response because the Interim Superintendent and Custodian were unsure how to respond since the request was received during the first (1st) month of their employment with the BOE. As the Council held in Paff, supra, seeing legal advice is reasonable, but it is not a lawful basis for delaying a response to an OPRA request.

Therefore, the current Custodian's failure to respond to the Complainant's second OPRA request dated January 21, 2009 in writing either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, supra.

Additionally, the Custodian certified that the BOE was not in possession of the requested settlement agreement. Specifically, the Custodian certified that the requested record was maintained by outside counsel hired by the New Jersey School Board's Insurance Group, ("NJSBAIG") the BOE's insurance agent. The Custodian obtained the requested settlement agreement from the outside counsel and provided such to the Complainant via letter dated April 1, 2009. The Complainant states that the Council has previously held that a government record includes records that may be located in the possession, custody or control of the public agency's employees or contractors. *See Schuler v. Borough of Bloomsbury (Hunterdon)*, GRC Complaint No. 2007-151 (February 2009).

In South Plainfield Republican Organization v. Buttligieri, MID-L-6593-05 (Sup. Ct. Nov. 10, 2005) (letter decision) (Ciccone, P.J.S.C.), rev'd in part, MID-L-6593-05, 2007 WL 1891301 (App. Div. July 3, 2007), the Plaintiff sought a settlement agreement which was in the possession of the Defendant Borough's joint insurance fund. The court ordered the Borough to produce a copy of the settlement agreement from the files of the Borough's joint insurance fund.

The crux of the trial court's decision hinged on whether the requested settlement was a "government record" for the purposes of OPRA or whether said record constituted attorney-client privileged information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. The court concluded that the settlement agreement was a government record subject to public access under OPRA and disclosed it to the Plaintiff. In the Appellate Division's recitation of the facts in Buttligieri, supra, the court stated that:

"[t]he Borough asserted that it was not in possession of the settlement agreement, deposition transcripts, nor any other portion of the litigation file. The Borough did not participate in, authorize, or approve the settlement. The funds for the settlement of the Pinto litigation were paid by the Middlesex County Joint Insurance Fund, an independent body, and not directly by the Borough. The only document relating to the litigation, which was in the possession of the Borough, was the stipulation of dismissal with prejudice filed with the Clerk of the Superior Court."

Thus, in Buttligieri, *supra*, the defendant Borough, while not in possession of the requested settlement agreement, had knowledge that some settlement had been reached because the Borough maintained a copy of the stipulation of dismissal.

The Custodian in the instant complaint certified in her SOI that her search of the BOE's files for the requested settlement agreement turned up only correspondence referring to the case requested, but not any judgment or court order regarding said litigation. Thus, similar to Buttligieri, *supra*, the Custodian had some knowledge of the litigation. The evidence of record indicates that the Custodian delegated her duties to the Interim Superintendent who in turn forwarded the request to the BOE Solicitor for a response because the Interim Superintendent and Custodian were unsure how to respond since the request was received during the first (1st) month of their employment with the BOE. There is no evidence in the record that indicates the Interim Superintendent or the BOE Solicitor conducted any search for the requested settlement agreement. Additionally, there is no evidence in the record that indicates the Custodian, Interim Superintendent or BOE Solicitor expected status updates from the NJSBAIG regarding the litigation, or specifically any settlement agreements. Thus, it is reasonable that the Custodian should have contacted the NJSBAIG in an attempt to locate any records responsive to the Complainant's OPRA request.

Therefore, the Custodian unlawfully denied access to the requested settlement agreement because she had knowledge of the litigation and was obligated to obtain the settlement agreement from the insurance fund. However, the Custodian did provide the requested settlement agreements to the Complainant on April 1, 2009 after obtaining said agreements from outside counsel.

Whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney's fees?

OPRA provides that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

- institute a proceeding to challenge the custodian's decision by filing an action in Superior Court...; or
- in lieu of filing an action in Superior Court, file a complaint with the Government Records Council...

A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6.

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the court held that a complainant is a “prevailing party” if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. *Id.* at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial

determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. *Id.*

In Teeters, the complainant appealed from a final decision of the Government Records Council which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under OPRA against the Division of Youth and Family Services ("DYFS"). The records sought involved an adoption agency having falsely advertised that it was licensed in New Jersey. DYFS eventually determined that the adoption agency violated the licensing rules and reported the results of its investigation to the complainant. The complainant received the records she requested upon entering into a settlement with DYFS. The court found that the complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. *Id.* at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS's part. *Id.* As a result, the complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the Court remanded the determination of reasonable attorney's fees to the GRC for adjudication.

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." Mason, *supra*, at 71, (quoting Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). The court in Buckhannon stated that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." (quoting Black's Law Dictionary 1145 (7th ed. 1999)). The court in Mason, *supra*, at 76, held that "requestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) 'a factual causal nexus between plaintiff's litigation and the relief ultimately achieved'; and (2) 'that the relief ultimately secured by plaintiffs had a basis in law.'" Singer v. State, 95 N.J. 487, 495, cert denied (1984)."

The Complainant filed this instant Denial of Access Complaint because he received no response to his OPRA requests dated December 31, 2008 and January 21, 2009. The Complainant asserted that the Council should find the Custodian in violation of OPRA for failing to provide a written response to his OPRA requests within the statutorily mandated seven (7) business days thus resulting in a "deemed" denial of said OPRA requests. As stated above, both the original and current Custodians violated OPRA at N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his OPRA requests within the statutorily mandated seven (7) business days.

Additionally, the Complainant sought an order from the Council directing the Custodian to disclose the requested settlement agreement to the Complainant. Although the Council did not order the Custodian to disclose said record to the Complainant, the Custodian provided said record to the Complainant on April 1, 2009, after the filing of

this Denial of Access Complaint. Additionally, the Council held that the Custodian unlawfully denied access to the requested settlement agreement because she had knowledge of the litigation and was obligated to obtain the settlement agreement from the insurance fund.

Pursuant to Teeters, *supra*, this Denial of Access Complaint did bring about a change in the Custodian's conduct. Specifically, the Custodian obtained the requested settlement agreement from the BOE's outside counsel and provided such to the Complainant. Thus, the relief ultimately achieved did have a basis in law because the Custodian was obligated to contact the outside counsel in an attempt to locate the requested settlement agreement. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The original Custodian's failure to respond to the Complainant's first (1st) OPRA request dated December 31, 2008 in writing either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. The current Custodian's failure to respond to the Complainant's second OPRA request dated January 21, 2009 in writing either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
3. The current Custodian unlawfully denied access to the requested settlement agreement because she had knowledge of the litigation and was obligated to obtain the settlement agreement from the insurance fund. However, the Custodian did provide the requested settlement agreements to the Complainant on April 1, 2009 after obtaining said agreements from outside counsel.
4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), this Denial of Access Complaint did bring about a change in the Custodian's conduct. Specifically, the Custodian obtained the requested settlement agreement from the outside counsel and provided such to the Complainant. Thus, the relief ultimately achieved did have a basis in law because the Custodian was obligated to contact the outside counsel in an attempt to locate

the requested settlement agreement. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

February 16, 2010



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

March 1, 2010

RE: John Paff v. Barrington School District, GRC Complaint No. 2009-55

To All Parties:

Please find attached the Interim Order of the Government Records Council (“GRC”) and the Findings & Recommendations of the Executive Director in the matter of GRC Complaint No.2009-55.

This is an interim administrative determination in this matter. Compliance with the Council’s Interim Order must include a legal certification pursuant to N.J. Court Rule 1:4-4. A guideline for said certification is as follows:

1. Identify Case and Complaint Number
2. Identify Document: “Certification of (Custodian’s Name)”
3. Contents of Certification
 - Custodian identifies position and responsibilities with agency
 - Custodian identifies relationship to case and records request
 - Custodian explanation of issues in dispute or information sought in response to Council’s order
 - Closing statement: “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.” *N.J. Court Rules, 1969 R. 1:4-4 (2005)*.
 - Custodian signs and dates “Certification”

The above information is a guide and does not reflect legal advice regarding “Certifications”

Requests for a stay of the effective date of an interim order of the GRC must be made prior to the last day by which action was to have been taken in accordance with that order. The GRC, acting through its Executive Director, may grant a stay for the period of time requested, but in no event longer than the date of the next regular meeting of the GRC.

A stay may be requested only if a party appeals the Council’s interim order to the Appellate Division of New Jersey Superior Court in accordance with *N.J. Court Rule 2:5-6*. Request for a stay of the effective date of a Council’s interim orders must be made



prior to the last day by which action was to have been taken in accordance with the Council's decision.

Requests for a stay must be in writing, delivered to the GRC and contemporaneously served upon all parties of the complaint pursuant to *N.J.A.C. 5:105-2.12*. Parties must file any objection to requests for a stay within ten (10) business days following receipt of the request. The Executive Director may grant a stay based on consideration of the request and any objection to the request submitted to the GRC. A request for a stay must include a detailed statement of the reason(s) why the stay should be granted and/or analysis of the issues, which must include the requestor's positions with regard to the following factors that the GRC will consider in its decision-making process:

1. The clear likelihood of success on the merits of the claim;
2. The danger of irreparable harm in the absence of a stay;
3. The harm to others if a stay is not grant: and
4. The public interest.

Requests for reconsideration must be completed on the appropriate form, delivered to the GRC within ten (10) business days following receipt of a GRC decision and contemporaneously served upon all parties of the complaint pursuant to *N.J.A.C. 5:105-2.10*. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The GRC, at its own discretion, may reconsider any decision it renders. The request for reconsideration form is located on the GRC website at www.nj.gov/grc (under "Forms" at the bottom right of the homepage) or may be obtained by contacting the GRC directly at 609-292-6830.

Should you have any questions please contact your Case Manager or call 609-292-6830.

Thank you,



Catherine Starghill, Esq.
Executive Director

Enclosures

Parties to the Complaint:

John Paff, Complainant, via E-Mail and Regular Mail

Walter M Luers, Counsel for Complainant, via E-Mail and Overnight Mail

Carol Anne Visalli, Custodian, via E-Mail and Overnight Mail

Ronald W Sahli, Counsel for Custodian, via E-Mail and Overnight Mail





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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

INTERIM ORDER

February 23, 2010 Government Records Council Meeting

John Paff
Complainant

Complaint No. 2009-55

v.

Barrington School District (Camden)
Custodian of Record

At the February 23, 2010 public meeting, the Government Records Council (“Council”) considered the February 16, 2010 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 original Custodian’s failure to respond to the Complainant’s first (1st) OPRA request dated December 31, 2008 in writing either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. The current Custodian’s failure to respond to the Complainant’s second OPRA request dated January 21, 2009 in writing either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
3. The current Custodian unlawfully denied access to the requested settlement agreement because she had knowledge of the litigation and was obligated to obtain the settlement agreement from the insurance fund. However, the Custodian did provide the requested settlement agreements to the Complainant on April 1, 2009 after obtaining said agreements from outside counsel.



4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), this Denial of Access Complaint did bring about a change in the Custodian's conduct. Specifically, the Custodian obtained the requested settlement agreement from the outside counsel and provided such to the Complainant. Thus, the relief ultimately achieved did have a basis in law because the Custodian was obligated to contact the outside counsel in an attempt to locate the requested settlement agreement. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Interim Order Rendered by the
Government Records Council
On The 23rd Day of February, 2010



Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.



Harlynn A. Lack, Secretary
Government Records Council

Decision Distribution Date: March 1, 2010

Law Offices of
Walter M. Luers, LLC

105 Belvidere Ave.
P.O. Box 527
Oxford, New Jersey 07863
Telephone: 908.453.2147
Facsimile: 908.453.2164
wluers@luerslaw.com

February 23, 2009

Walter M. Luers, Esq.*

*Also admitted in New York

VIA ELECTRONIC ATTACHMENT

Government Records Council
101 South Broad Street
P.O. Box 819
Trenton, New Jersey 08625

Re: Paff v. Barrington School District

Dear Sir or Madam:

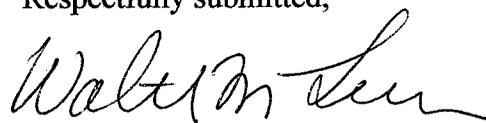
On behalf of John Paff, we attach for filing Mr. Paff's Complaint, Authorization and Exhibits. This action is being brought because Barrington School District ("Barrington" or "Records Custodian") has ignored Mr. Paff's Open Public Records Act ("OPRA") request to it on three different occasions.

On December 31, 2008, Mr. Paff filed an OPRA request with Barrington via email. Mr. Paff's OPRA request is attached as Exhibit 1. In that request, Mr. Paff asked for the settlement agreements with plaintiffs "O.H. parent of C.F." and "L.M. parent of B.E." in *Several Students v. Barrington Board v. Morgenroth*, Federal Court Docket 05cv5377. Mr. Paff never received a response to this OPRA request. On January 21, 2009, Mr. Paff resent his OPRA request via facsimile to Barrington's Interim Business Administrator, Carol Anne Visalli. (Exhibit 2). After receiving no response, on February 4, 2009, Mr. Paff placed a call to the Interim Business Administrator and left a detailed voicemail regarding his OPRA request. To date, Mr. Paff has not received any response.

Because Mr. Paff submitted his OPRA request in writing and on the GRC's official OPRA request form,¹ Barrington was obligated to respond to Mr. Paff's request promptly, and in no event later than within seven business days after receipt. *N.J.S.A. 47:1A-5(g) & (i)*. "In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request[.]" *N.J.S.A. 47:1A-5(i)*. Barrington's response to Mr. Paff was due either on January 12, 2009 (seven business days after his December 31, 2008 email to Barrington) or January 30, 2009 (seven business days after his January 21, 2009 fax to Barrington). Because the Records Custodian failed to provide a written response to Mr. Paff's OPRA request and failed to request an extension of time to respond, the Records Custodian violated OPRA. *Cottrell v. Borough of Glassboro*, GRC Complaint No. 2005-247 (Final Decision April 21, 2006).

Based on the foregoing, as well as the Complaint and Exhibits attached hereto, we respectfully request that the GRC (1) find that the Records Custodian violated OPRA by failing to respond at all to Mr. Paff's OPRA request; (2) order the Records Custodian to produce copies of the documents requested; and (3) find that Mr. Paff is the prevailing party and order an award of reasonable attorneys fees pursuant to *N.J.S.A. 47:1A-6*.

Respectfully submitted,



Walter M. Luers

cc: Records Custodian for Barrington School District

¹ Barrington has no official OPRA request form on its website, and Barrington has not responded to Mr. Paff's fax and phone call.



New Jersey Government Records Council Denial of Access Complaint

Please read these instructions before completing this form:

- This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002 under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- Please print or type your responses, and provide ALL information requested. Incomplete forms will delay processing. This form is available in downloadable format from the GRC web site at www.nj.gov/grc.
- Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- *The GRC recommends that you send the Custodian named in this complaint a copy of the complaint and that you keep a copy for your own files.*

MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:

Government Records Council
 PO Box 819
 Trenton, NJ 08625-0819

Fax: (609) 633-6337
 E-mail: grc@dca.state.nj.us

1. About the Requester of the Records:

Full Name: John Paff

Mailing Address: PO Box 5424

City: Somerset State: NJ ZIP 08875-5424

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: 732-873-1251

Fax Number: 908-325-0129

E-Mail Address: paff@pobox.com

If you are represented by an attorney in this matter, please provide:

Name: Walter M. Luers, Esq. Phone Number: 908-453-2147

Address: P.O. Box 527, Oxford, New Jersey 07863-0527 Fax Number: 908-453-2164

E-mail Address: wluers@luerslaw.com

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client's name: n/a - the client requested the records

2. About the Custodian of Records:

Name of the public agency from which records were requested: Barrington School District

Name of custodian on whom records request was submitted: Carole Anne Visalli, Interim Board Secretary

Telephone Number: 856-547-8648 E-Mail address Not known.

Name of custodian who denied records request (if different from above): None – deemed denial.

Telephone Number: 856-547-8648 E-Mail address (if used): _____

Fax Number: 856-547-5533

3. About the Record Request:

Date your records request was provided to the custodian: Dec. 31, 2008; Jan. 21, 2009

Did you receive a reply to your request? Yes No

If so, state the date your request was denied:

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes No

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes Date: _____ No

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No Yes If Yes, Docket Number: _____

4. Offer of Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation? Yes No

5. Documents to submit with this Form:

- Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- Summarize** the facts of this complaint by writing the content, time and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- Provide** any legal arguments, allegations or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm that:

- I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- The information I have provided is true to the best of my knowledge and belief;
- The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim; and
- I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim.
- I am simultaneously providing a copy of this complaint to the Custodian of Records



Signature (required)

02/23/09

Date

Transparent
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State of New Jersey
Barrington School District
GOVERNMENT RECORDS REQUEST FORM
Emailed totmack@barringtonschools.net on 12/31/08

Transparent
Government
is Vital

Important Notice

The reverse side of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name John MI _____ Last Name Paff

Company _____

Mailing Address PO Box 5424

City Somerset State NJ 08875 Email paff@pobox.com

Business Hours Telephone: Area Code 732 Number 873-1251 Extension _____

Preferred Delivery: Pick Up _____ Fax or Email On Site Inspect _____

Circle One: Under penalty of N.J.S.A. 2C:28-3, I certify that I **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature  Date 12/30/08

Payment Information

Maximum Authorization Cost \$ 6.00

Select Payment Method

Cash _____ Check Money Order _____

Fees: Pages 1-10 @\$0.75
Pages 11-20 @\$0.50
Pages 21 - @\$0.25

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Extraordinary service fees dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

- 1. Settlement Agreements with Plaintiffs "O.H. parent of C.F." and "L.M. parent of B.E." in (several students v. Barrington Board v. Morgenroth), Federal Court Docket 05cv5377.**
- 2. Any court order that seals these settlement agreements or otherwise exempts them from access.**

I prefer to receive my records and any responses via email or fax to 908-325-0129. Only if email or fax is not possible, or more expensive for me than regular mail, do I wish to receive regular mail.

I make this request pursuant to the Open Public Records Act, Senator Byron M. Baer Open Public Meetings Act and the common law right of access.

AGENCY USE ONLY

AGENCY USE ONLY

AGENCY USE ONLY

Est. Document Cost _____

Est. Delivery Cost _____

Est. Extras Cost _____

Total Est. Cost _____

Deposit Amount _____

Estimated Balance _____

Deposit Date _____

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____

Denied - Closed _____

Filled - Closed _____

Partial - Closed _____

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			
Custodian Signature _____		Date _____	

To: tmack@barringtonschools.net
From: John Paff <paff@pobox.com>
Subject: records request
Cc:
Bcc:
Attached: C:\a70305Data\Politics\LPSMC\Open Government Task Force\Barrington BOE\a81231OPRA.pdf;

Mr. Mack:

Please acknowledge receipt.

John Paff

FAX COVER SHEET

TO Interim B.A. Carol Anne Visalli

COMPANY Barrington Public Schools

FAX NUMBER +1-8565475533

FROM John Paff

DATE 1/21/09 3:39 PM

RE Records Request

COVER MESSAGE

Attached is a records request I submitted on 12/31/08. I have no record of having received a reply. Please advise.

John Paff

X-Originating-IP: [76.96.62.61]
X-Authority-Analysis: v=1.0 c=1 a=Qlotz2kKE-cA:10 a=8GZJvY467sAA:10
a=7nf6uvlbnUeGoQfAVWE2CQ==:17 a=F8AvrCCBAAAA:8
a=9rS5H_6U1oXtRVI8g2wA:9
a=dUQaf03NUQ623RletxUA:7 a=5Vaes5w6oyr4jnis6QqFB6_fLikA:4
a=KUJAPY1YduUA:10
a=qDKoXBJ7Z4G1xCIm:21 a=h1JzBJhcunnUCXg-:21
Delivered-To: cjsc@pobox.com
X-Pobox-Delivery-ID:
FEE09F6C-E7FC-11DD-B8E7-027E2C1ADE1D-97442625!maroon.pobox.com
x-pobox-client-address: 204.11.172.155
x-pobox-client-name: smtp5.ix2.j2.com
Date: Wed, 21 Jan 2009 12:43:53 -0800
From: send@mail.j2.com
To: cjsc@pobox.com
Subject: Successful transmission to 18565475533. Re: Records Request
X-J2Id: 882210869
X-J2BId: 882210862
X-J2CDate: 2009-01-21 12:39:37
X-J2SDate: 2009-01-21 20:43:52
X-J2FaxSubject: Records Request
X-J2FaxPages: 2
X-J2RecipientFaxNumber: 18565475533
X-J2FaxDateTime: 2009-01-21 20:43:52 (GMT)
X-J2FaxDuration: 82
X-J2RecipientCSID: 8565475533
X-J2ReferenceId:
X-J2FaxResultCode: SFAX
X-Pobox-Pass: send@mail.j2.com is whitelisted
X-Antivirus: AVG for E-mail 8.0.176 [270.10.10/1906]

Dear John Paff,

Re: Records Request

The 2 page fax you sent through j2 to 18565475533 was successfully transmitted at 2009-01-21 20:43:52 (GMT).

The length of transmission was 82 seconds.

The receiving machine's fax ID: 8565475533.

If you need additional assistance, please visit our online help center at <https://www.j2.com/jconnect/twa/page/help>. Thank you for using the jConnect service.

Best Regards,
j2 Global Communications

Customer Service

Help: <https://www.j2.com/jconnect/twa/page/help>

Tel: +1 (323)...

Email: help@mail.j2.com

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.176 / Virus Database: 270.10.10/1906 - Release Date:
1/21/2009 7:07 AM

Transparent
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State of New Jersey
Barrington School District
GOVERNMENT RECORDS REQUEST FORM
Emailed totmack@barringtonschools.net on 12/31/08

Transparent
Government
is Vital

Important Notice

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Requestor Information – Please Print

First Name John MI _____ Last Name Paff

Company _____

Mailing Address PO Box 5424

City Somerset State NJ 08875 Email paff@pobox.com

Business Hours Telephone: Area Code 732 Number 873-1251 Extension _____

Preferred Delivery: Pick Up _____ Fax or Email On Site Inspect _____

Circle One: Under penalty of N.J.S.A. 2C:28-3, I certify that I **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature  Date 12/30/08

Payment Information

Maximum Authorization Cost \$ 6.00

Select Payment Method

Cash _____ Check Money Order _____

Fees: Pages 1-10 @\$0.75
Pages 11-20 @\$0.50
Pages 21 - @\$0.25

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Extraordinary service fees dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

- 1. Settlement Agreements with Plaintiffs "O.H. parent of C.F." and "L.M. parent of B.E." in (several students v. Barrington Board v. Morgenroth), Federal Court Docket 05cv5377.**
- 2. Any court order that seals these settlement agreements or otherwise exempts them from access.**

I prefer to receive my records and any responses via email or fax to 908-325-0129. Only if email or fax is not possible, or more expensive for me than regular mail, do I wish to receive regular mail.

I make this request pursuant to the Open Public Records Act, Senator Byron M. Baer Open Public Meetings Act and the common law right of access.

AGENCY USE ONLY

AGENCY USE ONLY

AGENCY USE ONLY

Est. Document Cost _____

Est. Delivery Cost _____

Est. Extras Cost _____

Total Est. Cost _____

Deposit Amount _____

Estimated Balance _____

Deposit Date _____

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____

Denied - Closed _____

Filled - Closed _____

Partial - Closed _____

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			
Custodian Signature _____		Date _____	

To: tmack@barringtonschools.net
From: John Paff <paff@pobox.com>
Subject: records request
Cc:
Bcc:
Attached: C:\a70305Data\Politics\LPSMC\Open Government Task Force\Barrington BOE\a81231OPRA.pdf;

Mr. Mack:

Please acknowledge receipt.

John Paff

311 Reading Avenue
Barrington, NJ 08007
856-547-8648 x 124

**Barrington School
District
Business Office**

Memo

To: John Paff
From: Carol Anne Visalli, Business Administrator
Date: March 25, 2009
Re: GRC Complaint No. 2009-55

Attached is a copy of my response to the "Statement of Information" sent by the Government Records Council.

I am also mailing a copy to Mr. Luers, your attorney.

Barrington School District

311 Reading Avenue

Barrington, NJ 08007

(856) 547-8467

(856) 547-5533 (fax)

Anthony Arcodia
Interim Superintendent

Carol Anne Visalli
**School Business Administrator/
Board Secretary**

March 25, 2009

Government Records Council
In Care of Dara Lownie
101 South Broad Street
PO Box 819
Trenton, NJ 08625-0819

RE: Statement of Information Form, GRC Complaint No. 2009-55

Item 8.

I did not respond to the complainant's request because the request involved minor students and a former teacher. I delegated this duty to the Board Solicitor. The details follow:

Mr. Paff called my office on January 21, 2009, stating he had made an OPRA request by email to the former Business Administrator, and had received no response. I gave him our fax number, and told him to fax it and I would look into it. **This was my first day on the job.** When I saw that the request involved a legal case and students were involved, I immediately turned it over to the Interim Superintendent, Mr. Anthony Arcodia (his first day on the job was January 5, 2009.) He immediately turned the request over to our solicitor, Ronald W. Sahli. I anticipated getting advice on how to proceed to respond to this request.

While awaiting a response from Mr. Sahli, I looked into the files that were housed in the district. I only found copies of correspondence referring to the case requested. I did not find the JUDGEMENT in the files, nor is there a copy of any COURT ORDER pertaining to this case. **The records requested are not in the district.**

When I received a notice that a complaint had been filed, I realized that Mr. Sahli did not respond to the OPRA request as I had anticipated.

I then decided to contact our insurance agent, New Jersey School Boards Association Insurance Group. I discovered that they had assigned counsel to defend the district in this case. Perhaps they have the records that are requested. I am not sure if my Custodianship extends beyond the physical confines of the district. Am I responsible to procure the requested records from other sources?

Item 9. Document Index

(A)	(B)	(C)	(D)	(E)	(F)
List of all records responsive to Complainant's OPRA request (include the number of pages for each record).	List the Records Retention Requirement and Disposition Schedule for each records responsive to the Complainant's OPRA request	List all records provided to Complainant, in their <u>entirety</u> or <u>with redactions</u> (include the <u>date</u> such records were provided).	If records were disclosed with redactions, give a general nature description of the redactions.	If records were denied in their entirety, give a general nature description of the record.	List the legal explanation and statutory citation for the denial of access to records in the <u>entirety</u> or <u>with redactions</u> .
N/A	N/A	N/A	N/A	N/A	N/A

Item 10. I looked through all files in the Business Office, and the Superintendent's Office.

Item 11. I have no knowledge that any of the requested records have been destroyed.

Item 12. As stated in Item 8 above I did not respond to the complainant's request because the request involved minor students and a former teacher. I delegated this duty to the Board Solicitor. The details follow:

Mr. Paff called my office on January 21, 2009, stating he had made an OPRA request by email to the former Business Administrator, and had received no response. I gave him our fax number, and told him to fax it and I would look into it. **This was my first day on the job.** When I saw that the request involved a legal case and students were involved, I immediately turned it over to the Interim Superintendent, Mr. Anthony Arcodia (his first day on the job was January 5, 2009.) He immediately turned the request over to our solicitor, Ronald W. Sahli. I anticipated getting advice on how to proceed to respond to this request.

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Completed By:



Carol Anne Visalli
School Business Administrator

c: Mr. John Paff, complainant via his attorney, Walter M. Luers, LLC
105 Belviere Ave.
PO Box 527
Oxford, NJ 07863

Ronald W. Sahli, Board Solicitor
Deborah Strasser, c/o New Jersey School Boards Association Insurance Group
450 Veterans Drive
Burlington, NJ 08016

c: Mr. Anthony Arcodia, Interim Superintendent

Custodian Statement of Information John Paff v. Barrington School District (Camden) GRC Complaint No. 2009-55

**State of New Jersey
Government Records Council
Statement of Information Form**

This form is to be used by Records Custodians as their response to a complaint filed with the Government Records Council ("GRC") alleging the unlawful denial of a request to access government records under the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq.

An offer to mediate this complaint has been denied by one or more of the parties, or mediation has not resolved the complaint, and the matter is now within the GRC's jurisdiction. The GRC will conduct an investigation as part of the adjudication of the matter. The Custodian or the Custodian's Legal Counsel may complete the Statement of Information. However, the Records Custodian (or alleged Records Custodian) must sign the Statement of Information. The GRC will also consider any legal briefs, additional documentation or information submitted with the Statement of Information.

The signed Statement of Information must be returned to:

Government Records Council
In care of Dara Lownie
101 South Broad Street
P.O. Box 819
Trenton, NJ 08625-0819
Phone: (609) 341-3479
Fax: (609) 633-6337
E-mail: dlownie@dca.state.nj.us

The Statement of Information must be received no later than five (5) business days from your receipt of this form. Failure to comply with this deadline may result in the GRC adjudicating this complaint based only on the information submitted in the Denial of Access Complaint by the requestor of the records.

Please note that by signing the Statement of Information, the Custodian (or alleged Custodian) is certifying that a copy will be provided to the Complainant simultaneously with it being provided to the GRC.

IMPORTANT: Do not provide any records or excerpts of records that the Custodian claims is privileged or not accessible to the public under OPRA. A general description of the records' content will be sufficient.

DEFINITIONS: "Records request" or "request" refers to the formal OPRA request on which the complaint is based; "Requestor" or "Complainant" refers to the person who made the request on which this complaint is based; "Agency" refers to the public agency or subdivision of that agency to which the records request was directed; and "Records Custodian" or "Custodian" refers to the individual charged by the agency with the responsibility for fulfilling the request for records on which this complaint is based.

Custodian Statement of Information John Paff v. Barrington School District (Camden) GRC Complaint No. 2009-55

PART 1: CONTACT INFORMATION

1. GRC Complaint Number: 2009-55
2. Name of Complainant: John Paff
3. Name of (Alleged) Custodian: Carol Anne Visalli
Job Title of (Alleged) Custodian: School Business Administrator
4. Custodian's Public Agency: Barrington Board of Education
Address: 311 Reading Ave.
Barrington, NJ 08007

Phone: 856-547-8648 x 124
Fax: 856-547-5533
E-mail: cavisalli@barringtonschools.net
5. Name of Custodian's Legal Counsel: Ronald W. Sahli
Address: 1145 South White Horse Pike
P.O. Box 601
Hammonton, NJ 08037-0601

Phone: 609-567-9400
Fax: 908-325-0050
E-mail: rsahli@sahlipadovani.com

Custodian Statement of Information John Paff v. Barrington School District (Camden) GRC Complaint No. 2009-55

PART 2: ABOUT THE DENIAL OF ACCESS COMPLAINT

- 6. Attach a copy of the OPRA records request upon which this Complaint is based. Please mark this attachment "Item 6."
- 7. Indicate the date on which the Custodian received the OPRA records request upon which this complaint is based. (If the Custodian did not receive an OPRA records request, simply indicate "None received.")

11/21/09

- 8. Indicate the date on which the Custodian responded to the OPRA records request upon which this complaint is based. Provide all written documentation supporting the Custodian's response. If you use additional pages to respond, please mark each page "Item 8." (If the Custodian did not respond to the OPRA records request, simply indicate "No response was given.")

(see attached)

- 9. In keeping with the GRC's statutory mandate to investigate alleged denial of access complaints pursuant to N.J.S.A. 47:1A-7.e. and the court's instruction that all Custodians responding to denial of access complaints provide a document index containing certain information to the GRC pursuant to its decision in John Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App.Div. 2007), the Custodian must provide the document index table below. The document index table is required in the table format presented below. Please mark the table "Item 9."

An example of the required document index in table format is as follows:

(A) List of all records responsive to Complainant's OPRA request (include the number of pages for each record).	(B) List the Records Retention Requirement and Disposition Schedule for each records responsive to the Complainant's OPRA request	(C) List of all records provided to Complainant, in their <u>entirety</u> or <u>with redactions</u> (include the <u>date</u> such records were provided).	(D) If records were disclosed with redactions, give a general nature description of the redactions.	(E) If records were denied in their entirety, give a general nature description of the record.	(F) List the legal explanation and statutory citation for the denial of access to records in their <u>entirety</u> or <u>with redactions</u> .
<u>Example:</u> Closed session minutes for the May 15, 2006 Council Meeting	Records Retention Requirement: Must be retained by agency permanently. Disposition Schedule: May be archived only (destruction not allowed)	Closed session minutes provided with redactions on June 20, 2007 (3 business days after receiving the OPRA request).	Redactions were made only to delete the discussion of the Council members regarding the personnel matter of Jane Doe.	N/A	<u>N.J.S.A. 47:1A-9.a.</u> (allows exemptions from disclosure contained in other state statutes to apply under OPRA) and <u>N.J.S.A. 10:4-12</u> (allows governing

Custodian Statement of Information John Paff v. Barrington School District (Camden) GRC Complaint No. 2009-55

					bodies to exclude the public from discussions of personnel matters).
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For more clarification of the information required in the document index in table format:

- A. An itemized list of all records responsive to the Complainant's OPRA request that were made, maintained, kept on file or received by your agency on the date of the request, regardless of whether you deem such records are exempt from disclosure.
 - B. State the agency's Records Retention Period (in years) and Destruction Schedule (in years) for each record responsive to the request as established and approved by the New Jersey Department of State, Division of Archives and Records Management.
 - C. Of the records responsive to the request, indicate which records, if any, were provided to the Complainant, in their entirety or with redactions, and the dates such records were provided.
 - D. Of the records responsive to the request and provided to the Complainant with redactions, give a general nature description of the redactions.
 - E. Of the records responsive to the request, and *not* provided to the Complainant in their entirety, give a general nature description of the record.
 - F. Specifically state the legal explanation and statutory citation (to OPRA or other law that applies) for such denial based on a public agency's burden of proving that all denials of access are authorized by law pursuant to N.J.S.A. 47:1A-6 and the court's instruction to provide same in John Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App.Div. 2007).
10. Specifically describe the search undertaken to satisfy the records request upon which this complaint is based.
 11. Specifically state the last date on which documents that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.
 12. Provide all facts and legal arguments in support of the Custodian's actions with regard to the handling of the OPRA records request upon which this complaint is based on an attached written statement marked "Item 12."

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State of New Jersey
Barrington School District
GOVERNMENT RECORDS REQUEST FORM
Emailed totmack@barringtonschools.net on 12/31/08

Item 6

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Important Notice

The reverse side of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information - Please Print

First Name John MI _____ Last Name Paff

Company _____

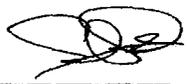
Mailing Address PO Box 5424

City Somerset State NJ 08875 Email paff@pobox.com

Business Hours Telephone: Area Code 732 Number 873-1251 Extension _____

Preferred Delivery: Pick Up _____ Fax or Email On Site Inspect _____

Circle One: Under penalty of N.J.S.A. 2C:28-3, I certify that I **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature  Date 12/30/08

Payment Information

Maximum Authorization Cost \$ **6.00**

Select Payment Method

Cash _____ Check Money Order _____

Fees: Pages 1-10 @\$0.75
Pages 11-20 @\$0.50
Pages 21 - @\$0.25

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Extraordinary service fees dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

- 1. Settlement Agreements with Plaintiffs "O.H. parent of C.F." and "L.M. parent of B.E." in (several students v. Barrington Board v. Morgenroth), Federal Court Docket 05cv5377.**
- 2. Any court order that seals these settlement agreements or otherwise exempts them from access.**

I prefer to receive my records and any responses via email or fax to 908-325-0129. Only if email or fax is not possible, or more expensive for me than regular mail, do I wish to receive regular mail.

I make this request pursuant to the Open Public Records Act, Senator Byron M. Baer Open Public Meetings Act and the common law right of access.

AGENCY USE ONLY

Est. Document Cost _____

Est. Delivery Cost _____

Est. Extras Cost _____

Total Est. Cost _____

Deposit Amount _____

Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____

Denied - Closed _____

Filled - Closed _____

AGENCY USE ONLY

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			

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Facsimile: 908.453.2164
wluers@luerslaw.com

October 9, 2009

Walter M. Luers, Esq.*

*Also admitted in New York

VIA ELECTRONIC ATTACHMENT

Ms. Dara Lownie
Senior Case Manager
Government Records Council
101 South Broad Street
P.O. Box 819
Trenton, New Jersey 08625

Re: Paff v. Barrington School District, GRC Complaint No. 2009-55

Dear Ms. Lownie:

On behalf of John Paff, we write regarding Barrington School District's March 25, 2009 Statement of Information and April 1, 2009 letter.

While we appreciate that the Records Custodian and the School Superintendent may have been new to their jobs in January 2009, Mr. Paff gave the Records Custodian three opportunities to respond to his OPRA request. Also, the Records Custodian cannot delegate her duty to respond to OPRA requests; while it appears that, here, the public record was in the possession of outside counsel to the Barrington School District, the Records Custodian still had a duty to retrieve that record, especially when outside counsel failed to respond.

Regarding Item 12, Ms. Visalli claims that she had a conversation with Mr. Paff on January 21, 2009. Mr. Paff has no recollection of speaking with Ms. Visalli on that date, or any other date. Regardless of whether they spoke, the requested Settlement Agreement was not produced.

By correspondence dated April 1, 2009, the Records Custodian has produced the requested document (albeit with redactions). Specifically, the Records Custodian stated that “Although the Barrington Board of Education was not in possession of the documents requested in your January 2009 OPRA request, we have since obtained copies from our attorney of record in the federal lawsuit to which your demand referred.” No explanation is given why it took four months for the Records Custodian to get copies of the settlement documents from counsel. As the GRC held in *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151, where a borough engineer performed professional work for the borough pursuant to a professional services agreement, public records located at the borough engineer’s office were still records that the Records Custodian was required to produce. Both settlement agreements are “effective” as of December 17, 2007. Therefore, it cannot be said the agreements did not exist at the time of Mr. Paff’s OPRA request. (The “effective date” is located at paragraph 23 of each agreement). Because Mr. Paff’s complaint with the GRC was clearly the catalyst in the disclosure of the Settlement Agreements, because the document existed and was in the possession of the attorneys for the District, we request that the GRC find in favor of Mr. Paff, hold that he is the prevailing party, and award a reasonable attorneys’ fee to Plaintiff.

Respectfully submitted,

/s/ Walter M. Luers

Walter M. Luers

cc: Records Custodian for Barrington School District
Counsel for Barrington School District