

Karyn Gordon, Esq., Acting Director
Government Records Council
PO Box 819
Trenton, NJ 08625-0819
via e-mail only to grc@dca.state.nj.us
cc to Jonathan Busch, Esq. via e-mail to jbusch@sseclaw.com

Dear Ms. Gordon:

Please accept this e-mail as my request for an advisory opinion in accordance with N.J.A.C. § 5:105-4.1.

Question presented:

Does a civil complaint that has been filed with the court but which identifies a student by name constitute a "student record" within the definition of N.J.A.C. 6A:32-2.1 which is subject to the confidentiality provisions of N.J.A.C. 6A:32-7.5?

Background:

1. On October 3, 2012, I submitted a [records request](#) to the Edison Township Board of Education for the civil complaint filed in Ji v. Edison Board of Education, Docket No. MID-L-1637-11.

2. On October 9, 2012, I received a [redacted version of the requested complaint](#) from the records custodian.

3. By way of an [October 9, 2012 e-mail](#), I challenged the Board's decision to redact the plaintiff-student's identifying information from the lawsuit. In support of my challenge, I attached to my e-mail a [screen shot](#) from the New Jersey Superior Court's on-line civil case index showing that the plaintiffs in the lawsuit were already identified by name in public court filings.

4. On October 9, 2012, I received a [response](#) from the custodian defending the Board's decision to redact the plaintiffs' identifying information based on N.J.A.C. 6A:32 and the Family Educational Rights and Privacy Act (FERPA).

5. Also on October 9, 2012, I spoke with the custodian's attorney, Jonathan Busch, who raised a credible argument that, in accordance with a strict application of N.J.A.C. 6A:32, an unredacted version of the lawsuit was exempt from access under OPRA even though the unredacted lawsuit could readily be obtained from the court clerk's office.

6. After speaking with Mr. Busch, we both agreed that the it would not serve the taxpayers' interest to litigate this matter but that the public's interest would be better served if the Council would issue an advisory opinion clarifying a custodian's duties under OPRA when a civil lawsuit that identifies a minor is requested. Accordingly, I withdrew my [objection](#) to the Board's response and submitted this request instead of pursuing litigation.

Argument:

I submit that a) it is logically inconsistent for OPRA to prevent the Board of Education from disclosing identifying information contained within a lawsuit that has been served upon it while the suppressed information can be readily obtained from another government agency and b) that the Board, regardless of logical consistency, has a duty to abide by the exemptions contained within N.J.A.C. 6A:32.

In my conversation with Mr. Busch, we discussed that the question presented here could similarly arise before any board of education and that it would be undesirable for the public treasury to be forced to pay for the costs of litigating the question when N.J.A.C. § 5:105-4.1(b) allows the Council, at its discretion, to issue "[a]dvisory opinions [to] address whether general categories of records are disclosable . . ." Accordingly, I request an advisory opinion on this matter.

Very truly yours,

*John Paff, Chairman
New Jersey Libertarian Party's
Open Government Advocacy Project
P.O. Box 5424
Somerset, NJ 08875
Voice: [732-873-1251](tel:732-873-1251)
Fax: [908-325-0129](tel:908-325-0129)
e-mail: paff@pobox.com*