

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 30, 2013 Council Meeting**

**Claudia Vargas  
(On behalf of The Philadelphia Inquirer)<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-126**

**v.**

**New Jersey Department of Education<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of the most recent New Jersey Department of Education conflict of interest disclosure forms, also called “Ethics Forms,” filed by Camden City School Board members and administrators.

**Request Made:** April 2, 2012

**Response Made:** April 25, 2012

**GRC Complaint Filed:** April 25, 2012<sup>3</sup>

**Background<sup>4</sup>**

**Request and Response:**

On April 2, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the records listed above. On April 25, 2012, the sixteenth (16<sup>th</sup>) business day following the Custodian’s receipt of the request, the Custodian provided the Complainant with the requested records with the street addresses of the individuals redacted to protect their reasonable expectation of privacy.<sup>5</sup>

**Denial of Access Complaint:**

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Paul Crupi, current Custodian of Records. However, Maria Casale was the Custodian of Records at the time of the OPRA request and Denial of Access Complaint. Ms. Casale submitted all correspondence to the GRC regarding this complaint. Represented by DAG Geoffrey Stark, on behalf of the NJ Attorney General.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> 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.

<sup>5</sup> The parties exchanged written communication regarding this request during the sixteen (16) business day time period. Additionally, the Complainant does not raise any timeliness issues regarding the Custodian’s response to the OPRA request in the Denial of Access Complaint.

On April 25, 2012, the Government Records Council (“GRC”) received the Complainant’s Denial of Access Complaint, challenging the redactions made to the home addresses contained in the requested records. The Complainant contends that without the home addresses, the public cannot confirm that the Camden City Board of Education members live in the City of Camden, a requirement for the position of Board Member.

Statement of Information:

On June 6, 2012, the Custodian submitted her Statement of Information (“SOI”) in response to the Complainant’s Denial of Access Complaint. The Custodian certifies that on April 25, 2012, she provided the requested records to the Complainant and redacted the street addresses of the individuals, but not the City or State. The Custodian certifies that it is the New Jersey Department of Education’s policy to redact citizens’ home addresses from records requested under OPRA to protect the citizens’ reasonable expectation of privacy.

Additional Information:

At the GRC’s request, the parties submitted responses to a balancing test questionnaire established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995) in order for the Council to determine whether the privacy interests of the individuals named in government records are outweighed by any factors militating in favor of disclosure.

The Complainant’s responses are detailed below:

1. Why do you need the requested records?

Complainant’s Response: To check if Camden School Board members do indeed live in the city, as required by law.

2. How important are the requested records or information to you?

Complainant’s Response: It is important because it would serve as public proof that School Board members are abiding by the law. In addition, School Board members are normally elected officials so similar to how someone running for city council would have his full address on the petition and other documents available under OPRA, School Board members should do the same in having their addresses public. Having appointed members should not change whether the members’ addresses are public.

3. Do you plan to redistribute the requested records or information?

Complainant’s Response: Not unless information within the document was newsworthy and valuable to the public.

4. Will you use the requested records or information for unsolicited contact of the individuals named in the government records?

Complainant's Response: The Complainant's first approach in contacting anyone for a story is by telephone. If the person cannot be reached by telephone, the Complainant will drive to the house. This is common practice in giving any subject of a news story a chance to respond.

The Custodian's responses are detailed below:

1. The type of records requested.

Custodian's Response: Financial and personal disclosure forms filed by Camden City School Board members.

2. The information the requested records do or might contain.

Custodian's Response: The records include information about the Board members' sources of income, employment and the employment of relatives to identify potential conflicts of interest. The records also include the Board members' home addresses. Only the street address was redacted from the records.

3. The potential harm in any subsequent non-consensual disclosure of the requested records.

Custodian's Response: The Department of Education always redacts street addresses to protect individuals from unwanted intrusions into their privacy. Privacy concerns are raised where disclosure of the address can invite unsolicited contact or intrusion based on the information revealed. The Department considers this a public safety issue as well.

4. The injury from disclosure to the relationship in which the requested record was generated.

Custodian's Response: Board members and other individuals doing business with the Department generally expect that personal information such as home street addresses will not be given to the press or other members of the public. School Board members are volunteers who might think twice about serving in that capacity if they felt that their home addresses would be published and disseminated.

5. The adequacy of safeguards to prevent unauthorized disclosure.

Custodian's Response: There are no safeguards to prevent unauthorized disclosure, which is why the Custodian redacted the addresses.

6. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access.

Custodian's Response: The Custodian does not believe so. The Custodian believes that the individual's reasonable expectation of privacy clearly includes the home address. The Custodian asserts that the release of home addresses presents a greater danger of unwanted intrusion into one's physical space than the release of personal e-mail addresses or phone numbers, which the

Department also routinely withholds. The Custodian states that the Department cannot control whether the Complainant can obtain this information elsewhere on other public databases.

### Analysis<sup>6</sup>

#### 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.

The Complainant filed this Denial of Access Complaint challenging the redactions made to the home addresses contained on the requested Ethics Forms.” The Custodian certified in her SOI that she redacted the home addresses to protect the citizens’ reasonable expectation of privacy.

OPRA does not specifically identify a citizen’s home address as confidential information. Nevertheless, OPRA does provide that “a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy...” N.J.S.A. 47:1A-1. Because privacy interests are at issue here, the GRC asked both the Complainant and the Custodian to respond to balancing test questions so the Council could employ the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995). This test enables the Council to balance the Department of Education’s asserted need to protect the privacy of individuals against the Complainant’s asserted need to access the requested records.

In response to the balancing test questions, the Custodian described the records at issue as financial and personal disclosure forms filed by Camden City School Board members. The Custodian stated that the records include information about the Board members’ sources of income, employment and the employment of relatives to identify potential conflicts of interest, as well as the Board members’ home addresses. The Complainant indicated that her need for the unredacted records is to verify whether the School Board members reside in the City of Camden. However, the Custodian stated that she only redacted the street address, but that the City and State remained unredacted from the records. Additionally, the Custodian stated that there are no safeguards to prevent unauthorized disclosure of the unredacted records. Further, the Complainant indicated that she might redistribute the records if the information contained therein was newsworthy and/or valuable to the public.

In balancing the Complainant’s need for the requested ethics forms against the Custodian’s need to keep the street addresses contained on said forms confidential, the Custodian’s need for privacy outweighs the Complainant’s need for access. Specifically, the

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<sup>6</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

Complainant's stated need for the unredacted record is to verify that the School Board members reside in the City of Camden. However, the Custodian did not redact the City and State from the requested records. Therefore, the Complainant is currently in possession of the information she seeks, namely, whether the School Board members reside in the City of Camden.

The Council has previously addressed the disclosure of home addresses contained on financial disclosure statements. In Walsh v. Township of Middletown (Monmouth), GRC Complaint No. 2008-266 (Interim Order dated November 18, 2009), the Council held that "[b]ased on the language of N.J.S.A. 40A:9-22.6(b) [and] N.J.S.A. 40A:9-22.6(c)...the Custodian has unlawfully redacted addresses of real property owned by public officials." The Council's decision in Walsh hinged on the language of the Local Government Ethics Law.

Pursuant to the Local Government Ethics Law, all financial disclosure statements filed are public records. N.J.S.A. 40A:9-22.6(c). The law requires local government officers to annually file a financial disclosure statement containing information about, among other things, the address and brief description of all real property in the State in which the local government officer or a member of his immediate family held an interest during the preceding calendar year. N.J.S.A. 40A:9-22.6(b). The law lists addresses of real property owned by a public official or immediate family member as required information to be provided on a financial disclosure statement.

However, the Council's holding in Walsh, supra, is distinguishable from this instant complaint. While the Local Government Ethics Law governed the financial disclosure statements in Walsh, that is not the case here since the financial disclosure statements at issue are for School Board members, not local government officials. School officials are required to file an annual financial disclosure statement with the School Ethics Commission pursuant to N.J.S.A. 18A:12-26.<sup>7</sup> Unlike the Local Government Ethics Law, the education statute does not require school officials to provide addresses of real property owned by a public official or immediate family member. Rather, the required information is for each source of income, each source of fees and honorariums, each source of gifts, reimbursements or prepaid expenses, and the name and address of all business organizations in which the school official or a member of his immediate family had an interest during the preceding calendar year.

Therefore, in balancing the Complainant's need for the redacted street addresses contained on the requested records against the Custodian's need to keep the information confidential, non-disclosure of the street address is favored. The Complainant is currently in possession of the information she seeks, namely, whether the school board members reside in the City of Camden. Additionally, the education law does not require school officials to include addresses of real property owned on the financial disclosure statements. N.J.S.A. 18A:12-26. Thus, the Council's decision in Walsh, supra, holding that the addresses contained on local government financial disclosure statements, is inapplicable here. As such, the Custodian has lawfully denied access to the street addresses contained on the requested records pursuant to N.J.S.A. 47:1A-1, on the basis that the disclosure of the street addresses would violate the citizens' reasonable expectation of privacy.

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<sup>7</sup> Pursuant to N.J.S.A. 18A:12-27 the School Ethics Commission is established within the State Department of Education.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that in balancing the Complainant's need for the redacted street addresses contained on the requested records against the Custodian's need to keep the information confidential, non-disclosure of the street address is favored. The Complainant is currently in possession of the information she seeks, namely, whether the school board members reside in the City of Camden. Additionally, the education law does not require school officials to include addresses of real property owned on the financial disclosure statements. N.J.S.A. 18A:12-26. Thus, the Council's decision in Walsh v. Township of Middletown (Monmouth), GRC Complaint No. 2008-266 (Interim Order dated November 18, 2009), holding that the addresses contained on local government financial disclosure statements, is inapplicable here. As such, the Custodian has lawfully denied access to the street addresses contained on the requested records pursuant to N.J.S.A. 47:1A-1, on the basis that the disclosure of the street addresses would violate the citizens' reasonable expectation of privacy.

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Executive Director

April 23, 2013