



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

INTERIM ORDER

July 25, 2017 Government Records Council Meeting

Judy DeHaven  
Complainant

Complaint No. 2017-81

v.

Red Bank Charter School (Monmouth)  
Custodian of Record

At the July 25, 2017 public meeting, the Government Records Council (“Council”) considered the July 18, 2017 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The GRC attempted to obtain a completed Statement of Information from the Custodian. Moreover, the GRC reset the time frame after being made aware of a purported change in the Custodian’s e-mail address. Even thereafter, the Custodian had more than sufficient time to address the most recent SOI request but failed to do so. Thus, the Custodian’s failure to provide a completed SOI to the GRC results in a violation of N.J.A.C. 5:105-2.4(a).
3. The Custodian unlawfully denied access to the responsive records. N.J.S.A. 47:1A-6. The Custodian must therefore disclose the responsive submissions. Should the responsive records for certain, or all, years not exist, the Custodian must certify to this fact.
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**



**redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of July, 2017



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: July 27, 2017**

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<sup>1</sup> "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."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.