



FREEHOLD REGIONAL HIGH SCHOOL DISTRICT

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March 9, 2022

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Bryan Bender or Brian Bender

Dear Mr. Bender.

This letter is in response to your OPRA Request that was contained within your February 26, 2022, email to me as the Board's Records Custodian. Since your request was received on a day that the Board was not open for business, your request was deemed received on the Board's next business day, which was February 28, 2022. Accordingly, the seventh business day by which the Board must respond to your Request is Wednesday, March 9, 2022. This response is being provided to you within that timeframe.

OPRA defines a "government record" of a public entity 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 in the course of his or its official business ..." N.J.S.A. 47:1A-1.1. Accordingly, the Board is required to produce only those records which it maintains in the official course of business and which are not otherwise exempt from production. Pursuant to the definition of a government record, a public entity is not required by OPRA to research information and/or create records that do not exist in response to OPRA requests. See e.g., Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 537 (App. Div. 2005).

The Board's response to your Request is follows:

1. *Any and all Board of Education Minutes that mention the Merchant BARK, BARK LLC., and/or Bark for Schools between 9/1/2018 and 2/26/2022. This should include any mention of BARK in School district official emails from frhsd.com, School District Board Policy, Regulations, Board of Education minutes as well as any Contracts executed or Bills Paid to Bark Inc. occurring during the mentioned time frame 9/1/2018 and 2/26/2022*

Response: As an initial matter, the Board objects to the use of "any and all" in your Request since it is well established that under OPRA a request "any and all" documents or records is unclear, overly broad and burdensome. See New Jersey Builder's Ass'n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); Moreover, a

records custodian is not required under OPRA to conduct research to discover which records are relevant or responsive to an open-ended request. Instead of identifying with reasonable clarity specific documents that are sought, the Requests inappropriately seek “any and all” records; therefore, to the extent this is a component of your Request, same is invalid under OPRA and is denied.

Also to the extent that your Request seeks any emails sent to or from an “frhsd.com” email account, your Request is invalid and is further denied. In that respect, the GRC has previously established that for an OPRA request seeking emails to be valid the request must contain: “(1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the emails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.” See Joseph A. Elcavage v. West Milford Twp., GRC Complaint No. 2009-07 (April 8, 2010). Here, the Request fails to identify any sender and/or recipient, and rather impermissibly seeks “all of the emails” referencing the search terms noted in Your Request.

With respect to the portion of your Request that seeks portions of the Board’s minutes, the official minutes of the Board’s meetings are publicly available on the District’s website at <https://go.boarddocs.com/nj/frhsd/Board.nsf/Public>. Please note that in order to access the Board’s meeting minutes by year, you will have to click on the “Meetings” option at the top of the screen. From there, you will be able to access all of the Board’s official minutes by year from the current year (2022) back to the 2014 calendar year.

Even though an OPRA request is a vehicle for accessing government records rather than for the purposes of submitting questions and/or requests for information, in the spirit of OPRA, please note that there are no references in the Board’s minutes to the search terms noted in your Request.

With respect to the portion of your Request that seeks portions of the Board’s Policies and Regulations, all of the Board’s Policies and Regulations are publicly available on the District’s website at <https://www.straussesmay.com/seportal/Public/pubELANOnline.aspx?id=7858262563e847ff8c696a5498430f85>.

Even though an OPRA request is a vehicle for accessing government records rather than for the purposes of submitting questions and/or requests for information, in the spirit of OPRA, please note that there are no references in the Board’s Policies or Regulations to the search terms noted in your Request.

Finally, in response to the portion of your Request seeking any “Contracts executed or Bills Paid to Bark Inc.,” the Board does not have documents that are responsive to this Request. By way of further response, the BARK monitoring program is provided free of charge to school issued accounts.

2. *Any and all official email communication between employees of the Freehold Regional High School District and Bark, Bark Inc., Bark LLC, and/or Bark for schools between 9/1/2018 and 2/126/2022. redacted as necessary.*

Response: The Board objects to and is denying this Request because it is overly burdensome and would be disruptive to District operations, as well as the fact that the Request fails to seek an identifiable government record.

As a general matter, the Board objects to the use of "any and all" in your Request since it is well established that under OPRA a request "any and all" documents or records is unclear, overly broad and burdensome. See New Jersey Builder's Ass'n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); Moreover, a records custodian is not required under OPRA to conduct research to discover which records are relevant or responsive to an open-ended request. Instead of identifying with reasonable clarity specific documents that are sought, the Requests inappropriately seek "any and all" records; therefore, to the extent this is a component of your Request, same is invalid under OPRA and is denied.

With respect to your request "all email communications" as noted above, that Request is denied for the following reasons.

First, a search of the Board's records revealed that the Request as currently written would encompass approximately 63,000 emails that would have to be located, retrieved, reviewed, and redacted, as appropriate and necessary. Such an undertaking constitutes an undue burden on District staff and would severely disrupt the day-to-day operations of the District.

Second request is also denied since it is an invalid request for email communications. In that respect, the GRC has previously established that for an OPRA request seeking emails to be valid the request must contain: "(1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the emails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof." See Joseph A. Elcavage v. West Milford Twp., GRC Complaint No. 2009-07 (April 8, 2010). Here, the Request fails to identify any sender and/or recipient, and rather impermissibly seeks "all of the emails" referencing the search terms noted in Your Request.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the District to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ 08625, or by e-mail at grc@dca.state.nj.us, or at their website at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

A handwritten signature in blue ink, appearing to read "SB", followed by a horizontal line.

Sean Boyce, CPA
Assistant Superintendent for Business Administration/Board Secretary
Records Custodian