



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

March 25, 2009 Government Records Council Meeting

Martin O'Shea
Complainant

Complaint No. 2007-244

v.

Wantage Township (Sussex)
Custodian of Record

At the March 25, 2009 public meeting, the Government Records Council ("Council") considered the March 18, 2009 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 because the Complainant failed to use the official OPRA request form adopted by Wantage Township, and with which the Complainant was provided a copy by the Custodian, the Complainant's October 3, 2007 OPRA request is invalid pursuant to N.J.S.A. 47:1A-5.f and N.J.S.A. 47:1A-5.g and the GRC's Advisory Opinion No. 2006-01.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 25th Day of March, 2009

Robin Berg Tabakin, Chair
Government Records Council



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

Janice L. Kovach
Government Records Council

Decision Distribution Date: March 30, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2009 Council Meeting**

**Martin O'Shea¹
Complainant**

GRC Complaint No. 2007-244

v.

**Wantage Township (Sussex)²
Custodian of Records**

Records Relevant to Complaint:

1. The three (3) most recent resolutions passed by the municipal body which authorized the exclusion of the public from the executive session meetings.
2. The executive session meetings minutes from the three (3) most recent meetings where the public was excluded.
3. Any ordinance, resolution or other document that sets the fees for the public to purchase copies of government non-paper records, including CDs, audio and video recordings, floppy disks and other types of media.

Request Made: October 3, 2007

Response Made: October 4, 2007

Custodian: Jim Doherty

GRC Complaint Filed: October 10, 2007³

Background

October 3, 2007

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on a model OPRA request form obtained from the GRC's website.⁴

October 4, 2007

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the first (1st) business day following receipt of such request. The Custodian states that access to the requested records is denied for several reasons. First, the Custodian states that the Complainant failed to make a valid request pursuant to OPRA. The Custodian states that:⁵

¹ There is no representation listed on record.

² Represented by Michael S. Garofalo, Esq. of Laddey, Clark & Ryan, LLP (Sparta, NJ).

³ The GRC received the Denial of Access Complaint on said date.

⁴ The Complainant altered the model request form for use in Wantage Township.

⁵ The Custodian does not provide a citation for his quote. However, the language is similar to language in Advisory Opinion 2006-01.

“In order to be considered a valid request under OPRA, the request must identify the specific record(s) desired, the request must be submitted to the records custodian of the public agency that has the records, and that agency’s records request form must be used to ask for the record.”

The Custodian states that the OPRA request form submitted by the Complainant was not the official OPRA request form adopted by Wantage Township for OPRA requests and for this reason the request is denied. The Custodian offers the Complainant the opportunity to re-submit his request on the official Wantage Township OPRA form by either going to the website indicated or using the form attached to the e-mailed response.

The Custodian also denies Complainant’s request Items No. 1 and No. 2 because he contends that the requests require research by the Custodian and as such are not valid requests. The Custodian further states that the GRC has determined that a custodian is not required to conduct research on behalf of a requester. The Custodian includes the internet link to the Township’s website containing the minutes for all council meetings so that the Complainant may research the exact dates of the meetings and resolutions he wants. Once the Complainant has ascertained the dates of the meetings for which he desires records, the Custodian encourages the Complainant to re-submit the request.

The Custodian also informs the Complainant that none of the executive session meeting minutes have been determined by the governing body to be public records but once the Complainant knows which meeting minutes he wants to request, the Custodian is willing to release the minutes pertaining to resolved issues.

Lastly, the Custodian states that request Item No. 3 is denied because it does not seek a specific record. The Custodian includes a link to the Wantage Township website which the Custodian believes may be helpful to the Complainant based on the Custodian’s interpretation of the Complainant’s records request.

October 10, 2007

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

- Complainant’s OPRA request dated October 3, 2007.
- E-mail from the Custodian to the Complainant dated October 4, 2007.
- Sample copy of the Wantage Township OPRA request form.

The Complainant states that he downloaded the GRC’s model request form from the internet and mail merged it with a Microsoft table containing the names and fax numbers of the twenty-four (24) municipalities in Sussex County. The Complainant states that he faxed this altered form to Wantage Township on October 3, 2007. The Complainant further states that the Custodian responded by e-mail. The Complainant states that the e-mail response contained a copy of the Wantage Township’s OPRA request form and that the form is also available online. The Complainant also states that he did not check to see which municipalities had adopted specific request forms because he believed it to be an unproductively time-consuming task and that such effort would

keep him from making the twenty-four (24) requests to the various municipalities in Sussex County in an expeditious and efficient manner.

The Complainant states that the motivation for the filing of this complaint is to seek clarification or reconsideration of the GRC's Advisory Opinion 2006-01. The Complainant argues that the GRC's intention in its adoption of Advisory Opinion 2006-01 is to limit the potential for vague or unspecified records requests that may create situations wherein agency employees run the risk of being penalized under OPRA due to the unclear nature of the request. The Complainant argues that this is not a valid consideration in this case because the form used by the Complainant was based on the GRC's Model Form and the Custodian should be able to determine that the Complainant was making an OPRA request. The Complainant maintains that the GRC's main purpose is to make government records readily accessible and that Advisory Opinion 2006-01 is diametrically opposed to that purpose. The Complainant states that he believes that a substantial roadblock would result for requesters of records, especially for those who make identical requests to several agencies at once, if the GRC upholds the Custodian's denial of his request.

The Complainant maintains that the records requested in request Item No. 1 are reasonably identifiable and as such require no research to fulfill the request. The Complainant maintains that the records in request Item No. 3 are also reasonably identifiable since the Custodian identified such a record in his written response to the Complainant's OPRA request.

Lastly, the Complainant argues that if the executive session minutes are unapproved, under Dina Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint 2006-51 (August 2006), the minutes would indeed be exempt from disclosure because they would fall under the OPRA exemption for inter-agency, consultative, or deliberative material. However, the Complainant contends that the Custodian fails to state that the minutes have yet to be approved. Instead, the Complainant maintains that the Custodian stated that the governing body had yet to determine the minutes to be public records.

The Complainant requests that the GRC find that the Custodian violated OPRA, order disclosure of the records requested, find that the Custodian's denial of the Complainant's request was unreasonable and a knowing and willful violation of OPRA, and assess a \$1,000.00 penalty against the Custodian.

October 10, 2007

Offer of Mediation sent to both parties.

October 19, 2007

The Complainant declines mediation and requests that the GRC begin a full investigation of this complaint.

October 25, 2007

Request for the Statement of Information sent to the Custodian.

November 1, 2007

Custodian's Statement of Information ("SOI") attaching the Complainant's OPRA request dated October 3, 2007.

The Custodian states that request Item No. 1 was not a valid OPRA request because it did not identify any specific record. The Custodian contends that if the GRC finds that the Complainant's request complies with Advisory Opinion 2006-01 and that the Complainant properly identified specific records, the records so identified (the three most recent resolutions allowing the governing body to meet in executive session) would have been provided on October 4, 2007 via the internet link to the Wantage Township website.

Regarding request Item No. 2, the Custodian again states that the Complainant's request is invalid because it fails to identify a specific record. However, the Custodian states that if the GRC finds that the Complainant's request satisfies Advisory Opinion 2006-01 and that the Complainant properly identified a record, the Custodian is willing to review the necessary minutes and provide properly redacted copies as stated in the Custodian's October 4, 2007 response to the OPRA request.

As to request Item No. 3, the Custodian maintains that a valid OPRA request was not submitted nor was any specific record identified by the Complainant. The Custodian states that the Complainant did not specify a record and declined an invitation by the Custodian to research the Township's files to identify records that may satisfy the Complainant's request. The Custodian states that he did, however, provide the Complainant with the most recent and currently enacted ordinance setting forth the Township's current fees.

The Custodian argues that the Complainant's OPRA request is invalid, but even if it were valid, the Custodian nevertheless complied with the Complainant's request. The Custodian maintains that with regard to records request Items No. 1 and No. 2, the Custodian fulfilled the request by providing the Complainant with the internet link to the records requested (municipal resolutions and executive session meeting minutes). As to records request Item No. 3, the Custodian asserts that the request is invalid because the Complainant's request requires research and fails to identify specific government records. The Custodian maintains that if he properly interpreted the intent of the Complainant, then the Complainant's request was fulfilled when the Custodian provided the Complainant with a copy of the most recent fee ordinance.

November 7, 2007⁶

The Complainant's response to the Custodian's SOI. The Complainant asserts that the following issues are the main issues in this complaint:

1. Whether a custodian can deny an OPRA request where the requester has used the Model OPRA Request Form instead of the township's OPRA request form?
2. Whether a custodian can deny an OPRA request based upon the lack of specificity in the request?

⁶ Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.
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The Complainant states that he withdraws his request for penalties because the Custodian based the denial of access on Advisory Opinion 2006-01. The Complainant invites the GRC to amend Advisory Opinion 2006-01 to require custodians to accept the GRC's Model OPRA Request Form, as well as the agency's official OPRA request form.

The Complainant states that he believes that this case provides the GRC with the opportunity to decide how strictly it would like to enforce the holding of New Jersey Builder's Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 178 (App. Div. 2007), stating that "OPRA requires a party requesting access to a public record to specifically describe the document sought."

The Complainant asks the GRC to find that his request for the most recently passed closed session resolutions is specific enough under Bent v. Township of Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) to inform the Custodian of the records sought. The Complainant distinguishes his case from Appellate Division decisions in Bent, supra; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); and Gannett New Jersey Partners v. County Of Middlesex, 379 N.J. Super. 205 (App. Div. 2005), which all dealt with the issue of the specificity of a request. These cases involved voluminous and complex requests but Complainant states that his request would require a minimum amount of searching to fulfill.

Analysis

Whether the Complainant's OPRA request is invalid because he substituted the GRC's model OPRA request form for the OPRA request form adopted by the public agency?

A review of OPRA and its legislative intent led the Council to conclude that use of the request form is required for all requesters. The statute provides that the custodian "shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency." N.J.S.A. 47:1A-5.f. The statute specifically prescribes what must be on the form:

- (1) space for the name, address and phone number of the requestor and a brief description of the government record sought;
- (2) space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged;
- (3) specific directions and procedures for requesting a record;
- (4) a statement as to whether prepayment of fees for a deposit is required;
- (5) the time period in which the public agency is required by OPRA to make the record available;
- (6) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- (7) space for the custodian to list reasons if a request is denied in whole or in part;
- (8) space for the requestor to sign and date the form;

(9) space for the custodian to sign and date the form if the request is fulfilled or denied. *Id.*

Although the statute does not expressly state that OPRA requests must be on the form adopted by the agency pursuant to N.J.S.A. 47:1A-5.f., principles of statutory construction show that the Legislature intended use of this form by all requestors to be mandatory. In interpreting a statute, it is axiomatic that “each part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole.” Matturi v. Bd. of Trustees of JRS, 173 N.J. 368, 383 (2002), quoting In re Passaic Cty. Utilities Auth., 164 N.J. 270, 300 (2000). In addition, a construction which renders statutory language meaningless must be avoided. Bergen Comm. Bank v. Sisler, 157 N.J. 188, 204 (1999). *See also* G.S. v. Dept. of Human Serv., 157 N.J. 161, 172 (1999). (a statute should be interpreted so as to give effect to all of its provisions, without rendering any language inoperative, superfluous, void, or insignificant).

As noted, N.J.S.A. 47:1A-5.f. requires that custodians adopt an OPRA request form and sets forth a detailed list of what the form must contain. The next subsection of the statute provides:

If the custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefore on the request form and promptly return it to the requester.* The custodian *shall sign and date the form and provide the requestor with a copy thereof.* N.J.S.A. 47:1A-5.g. (Emphasis added.)

The form to which N.J.S.A. 47:1A-5.g. refers is the form required by N.J.S.A. 47:1A-5.f. In providing in N.J.S.A. 47:1A-5.g. that the custodian “shall” sign and date the form, indicate the basis for denial on the form, and return the form to the requestor, the Legislature evidenced its clear intent that it is mandatory for the form to be used by requestors. *See* Harvey v. Essex Cty. Bd. of Freeholders, 30 N.J. 381, 391-92 (1959) (the word “shall” in a statute is generally mandatory). The express requirement that the custodian use the request form in denying an OPRA request, construed together with the preceding statutory requirement that the custodian adopt a request form, demonstrates that the Legislature intended that this form would be used for all OPRA requests. If all requestors are not required to submit requests on the form prescribed by the statute, then the statutory provisions requiring the custodian to sign and date the form, and return it to the requestor, would be meaningless. Indeed, a custodian would be unable to fulfill these express requirements of N.J.S.A. 47:1A-5.g. if the requestor does not use the form in submitting his request.

Accordingly, nothing in OPRA suggests that some requestors may forgo using the official request form. In enacting the form requirement, the Legislature has expressed its policy that use of the form promotes clarity and efficiency in responding to OPRA requests, consistent with OPRA’s central purpose of making government records “readily accessible” to requestors. N.J.S.A. 47:1A-1.

The Appellate Division has indicated that the statute's form requirement serves the additional purpose of prompting the legislative policy that a requester must specifically describe identifiable records sought. *See Mag Entertainment LLC v. Div. of ABC*, 375 N.J. Super. 534, 546 (App. Div. 2005) (an open-ended request that fails to identify records with particularity is invalid). In *Bent v. Twp. of Stafford Police Dept.*, 381 N.J. Super. 30, 33 (App. Div. 2005), the Court held that the requester's general request for information violated this policy and was therefore invalid. In reaching this conclusion, the Court noted that OPRA mandates that the request form provide space for a "brief description" of the record request. *Id.* Similarly, in *Gannett New Jersey Partners L.P. v. County of Middlesex*, 379 N.J. Super. 205, 213 (App. Div. 2005), the Court specifically pointed to the same statutory request form requirement in determining that OPRA does not authorize requesters to make blanket requests for agency records.

Accordingly, based on the language of the statute, as well as judicial recognition of the importance of the statutory request form, it is determined that the statute requires all requesters to submit OPRA requests on an agency's official OPRA records request form. OPRA's provisions come into play only where a request for records is submitted on an agency's official OPRA records request form. Additionally, the GRC requires that custodians direct requestors to the agency's official OPRA request form when denying a letter request on the basis that said request is not submitted on an official request form.

The Custodian asserts that Wantage Township has adopted an OPRA request form specific to the Township. The Complainant submitted an OPRA request on an altered Model OPRA Request Form. The Custodian informed the Complainant that his OPRA request was denied based upon his failure to use the official OPRA form adopted by Wantage Township and the broad nature of the request. The Custodian provided the Complainant with a copy of the Township's OPRA request form, as well as the web address of the Township's OPRA request form. The Complainant admits that he received the copy of Wantage Township's official OPRA request form which the Custodian provided to him. However, the Complainant specifically stated in the Denial of Access Complaint that he did not believe that it was an efficient use of his time to research and use the required forms when making multiple identical OPRA requests to multiple municipalities.

The inquiry into the broad nature of the Complainant's OPRA request is moot. The procedural defect in the Complainant's OPRA request terminates any further analysis into the substantive grounds of the denial.

OPRA requires custodians to adopt a form to be used by requesters in making OPRA requests. N.J.S.A. 47:1A-5.f. OPRA sets forth the minimum information requirements of an OPRA request form, not the maximum. There is nothing in OPRA that prohibits a municipality from adopting a form that incorporates the requirements set forth in N.J.S.A. 47:1A-5.f., as well as additional useful information specific to that custodial agency. OPRA does not limit or exclude the inclusion of additional information as long as that information does not conflict with OPRA.

Because the Complainant failed to use the official OPRA request form as adopted by Wantage Township and with which the Complainant was provided a copy by the

Custodian, the Complainant's October 3, 2007 OPRA request is invalid pursuant to N.J.S.A. 47:1A-5.f and N.J.S.A. 47:1A-5.g and the GRC's Advisory Opinion 2006-01.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant failed to use the official OPRA request form adopted by Wantage Township, and with which the Complainant was provided a copy by the Custodian, the Complainant's October 3, 2007 OPRA request is invalid pursuant to N.J.S.A. 47:1A-5.f and N.J.S.A. 47:1A-5.g and the GRC's Advisory Opinion No. 2006-01.

Prepared By: Sherin Keys, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

March 18, 2009