



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

ROBIN BERG TABAKIN, Chair  
COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**June 25, 2008 Government Records Council Meeting**

Thomas Driscoll  
Complainant

Complaint No. 2007-302

v.

School District of the Chathams (Morris)  
Custodian of Record

At the June 25, 2008 public meeting, the Government Records Council (“Council”) considered the June 18, 2008 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 the Custodian lawfully denied access to the Complainant’s request for “any and all information” without identifying any specific type of government record or a timeframe within which the records may have been created. Because the Custodian would have been required to identify, analyze, collate and compile documents responsive to the request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005) and Sandoval v. New Jersey State Parole Board, GRC Complaint No. 2006-167 (March 2007); *but see* Paff v. Borough of Roselle (Union), GRC Complaint No. 2007-255 (April 2008)(finding that because the Complainant identified a type of government record (resolutions and executive meeting minutes) within a specific date (the most recent meeting prior to the Complainant’s OPRA request and the first two (2) meetings after October 1, 2006), the request was not overly broad or unclear.) *See also* Vercammen v. Linden Police Department, GRC Complaint No. 2002-103 (December 2002). Additionally, the Custodian has borne his burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6.

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 25<sup>th</sup> Day of June, 2008

Robin Berg Tabakin, Chairman  
Government Records Council

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

David Fleisher, Secretary  
Government Records Council

**Decision Distribution Date: July 2, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 25, 2008 Council Meeting**

**Thomas Driscoll<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-302**

v.

**School District of the Chathams (Morris)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Any and all information received by the Board of Education (“BOE”) or the Superintendent’s Office regarding Cougar Field lighting and public address systems.

**Request Made:** November 30, 2007

**Response Made:** November 30, 2007

**Custodian:** Ralph H. Goodwin

**GRC Complaint Filed:** December 6, 2007

**Background**

**November 30, 2007**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**November 30, 2007**

Custodian’s Response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the same business day as receipt of such request. The Custodian states that access to the requested record is denied because the request is not a request for specific records and indicates his response on the Complainant’s OPRA request form.

**December 6, 2007**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching the Complainant’s OPRA request dated November 30, 2007 and the Custodian’s response noted thereon.

---

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

<sup>2</sup> Represented by Nicholas Celso III, Esq., of Schwartz, Simon, Edelstein, Celso & Kessler, LLC (Morristown, NJ).

The Complainant states that he submitted an OPRA request to the Custodian on November 30, 2007. The Complainant states that the Custodian responded on the same day asserting that the request was not for specific records.

The Complainant did not agree to mediate this complaint.

**December 18, 2007**

Request for the Statement of Information sent to the Custodian.

**December 20, 2007**

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel states that the BOE will be closed for the holidays beginning December 21, 2007 and requests a reasonable extension of time to submit the Statement of Information until January 8, 2008.<sup>3</sup>

**December 20, 2007**

E-mail from GRC to the Custodian's Counsel. The GRC grants the Custodian an extension until January 8, 2008 to file the Statement of Information.

**January 8, 2008**

Custodian's Statement of Information ("SOI") attaching the Complainant's OPRA request dated November 30, 2007 and the Custodian's response noted thereon.

The Custodian certifies that no search was undertaken because the Complainant's request lacked specificity as to which type or types of government records were being requested.

The Custodian's Counsel states that the Custodian received the Complainant's OPRA request on November 30, 2007 and immediately responded by asserting that the request was not a request for specific records.

The Custodian's Counsel states that in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534, 546 (App. Div. 2005), the Court held that government entities are required to disclose only identifiable government records and that OPRA is not intended to be used as a research tool that a litigant may use to force government officials to identify and siphon useful information. The Custodian's Counsel further states that in Caggiano v. Borough of Stanhope, GRC Complaint No. 2005-211 (February 2006), the GRC, citing MAG, held that a request for "any and all" records was overly broad and the Custodian in that case was not required to respond to such a request. The Custodian's Counsel also states that in Vercammen v. Linden Police Department, GRC Complaint No. 2002-103 (December 2002), the GRC dismissed the complaint due

---

<sup>3</sup> The Custodian's Counsel requests an extensive amount of time because the Custodian must prepare Statements of Information for four (4) Denial of Access complaints filed by the Complainant. Those three (3) other complaints are being adjudicated separately as Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-300, Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-301 and Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-303.

to the Complainant's failure to provide a time period within which to search for the requested police complaints, summons and arrest reports.

The Custodian's Counsel avers that the OPRA request relevant to this complaint starts with "any and all" and does not provide a specific time period within which to search for the records responsive and is therefore an invalid request.

### Analysis

#### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record 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 ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides that:

"[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ..." N.J.S.A. 47:1A-5.g.

OPRA further provides that:

"[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request ...* In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request ...*" (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

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.

In this complaint, the Complainant requests “any and all information” received by the BOE in reference to Cougar Field lighting and the public address systems. The Custodian contends that this request is similar to those held to be broad and unclear pursuant to Caggiano, supra and Vercammen, supra.

The New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records ‘readily accessible for inspection, copying, or examination.’* N.J.S.A. 47:1A-1.” (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ...* In short, OPRA does not countenance open-ended searches of an agency’s files.” (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>4</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.”<sup>5</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...”

---

<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>5</sup> As stated in Bent, supra.

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), the Complainant requested “all maps, engineering documents and other documents” relating to the developments and modifications of several blocks and lots. The Council held that “[b]ecause the Complainant’s OPRA request [Items] No. 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

Moreover, in Sandoval v. New Jersey State Parole Board, GRC Complaint No. 2006-167 (March 2007), the Complainant requested “information” relating to an evaluation. The Custodian denied access to the request item, asserting that the request was not a valid one under OPRA. The Council held that the Custodian lawfully denied access to the request item because the Custodian would have been required to identify, analyze, collate and compile documents responsive to the request.

Similarly in this complaint, the Complainant’s request for “any and all information” received by the BOE regarding the Cougar Field lighting and public address system fails to identify any specific type of government record or a timeframe within which the records may have been created. Therefore, the Custodian lawfully denied access to the Complainant’s request for “any and all information” because the Custodian would have been required to identify, analyze, collate and compile documents responsive to the request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005) and Sandoval v. New Jersey State Parole Board, GRC Complaint No. 2006-167 (March 2007). *But see* Paff v. Borough of Roselle (Union), GRC Complaint No. 2007-255 (April 2008)(finding that because the Complainant identified a type of government record (resolutions and executive meeting minutes) within a specific date (the most recent meeting prior to the Complainant’s OPRA request and the first two (2) meetings after October 1, 2006), the request was not overly broad or unclear) *See also* Vercammen v. Linden Police Department, GRC Complaint No. 2002-103 (December 2002). Additionally, the Custodian has borne his burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant’s request for “any and all information” without identifying any specific type of government record or a timeframe within which the records may have been created. Because the Custodian would have been required to identify, analyze, collate and compile documents responsive to the request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005) and Sandoval v. New Jersey State Parole Board, GRC Complaint No. 2006-167 (March 2007); *but see* Paff v. Borough of Roselle (Union), GRC Complaint No. 2007-255 (April 2008)(finding that because the Complainant

identified a type of government record (resolutions and executive meeting minutes) within a specific date (the most recent meeting prior to the Complainant's OPRA request and the first two (2) meetings after October 1, 2006), the request was not overly broad or unclear.) *See also* Vercammen v. Linden Police Department, GRC Complaint No. 2002-103 (December 2002). Additionally, the Custodian has borne his burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6.

Prepared By:

Frank F. Caruso  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

June 18, 2008