



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

December 18, 2008 Government Records Council Meeting

Paula DeLuca
Complainant

Complaint No. 2008-08

v.

City of Ventnor (Atlantic)
Custodian of Record

At the December 18, 2008 public meeting, the Government Records Council ("Council") considered the December 10, 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:

1. There is no violation of the statutorily required response time because the Complainant waived the statutorily mandated seven (7) business day time frame to respond. This waiver by the Complainant presumably also applies to the immediate access records.
2. Based upon the Appellate Division's decision in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) the Complainant's voluminous November 23, 2007 OPRA request, a forty-four (44) paragraph request including numerous records spanning nearly ten (10) years, is not a valid OPRA request because it bears no resemblance to the record request envisioned by the Legislature, which is one submitted on a form that "provide[s] space for . . . a brief description of the record sought." Id. at 179. See also Vessio v. Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007), Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2006-220 (September 2007), MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).
3. The handwritten notes of the City of Ventnor representatives at a particular meeting held during the period of January 2003 to August 2003 are not subject to disclosure because they are not a public record pursuant to O'Shea v. West Milford Board of Education, 391 N.J. Super. 534 (App. Div. 2007).



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 18th Day of December, 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: December 22, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 18, 2008 Council Meeting**

**Paula DeLuca¹
Complainant**

GRC Complaint No. 2008-08

v.

**City of Ventnor (Atlantic)²
Custodian of Records**

Records Relevant to Complaint: See attached OPRA request (an eight (8) page document listing forty-four (44) individual requests for records and information).

Request Made: November 23, 2007³

Response Made: December 24, 2007

Custodian: Sandra Biagi

GRC Complaint Filed: December 24, 2007

Background

November 23, 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.

December 14, 2007

Letter from the Complainant to the Custodian. The Complainant thanks the Custodian for confirming via telephone that the Custodian received the Complainant's OPRA request on November 29, 2007. The Complainant states that if the City intends to assert a complete denial of access to the requested records, then the Custodian should state this with a legal basis for the denial of access. The Complainant further states that if the City intends to partially deny access to some of the items in the request, the Custodian should identify those records not being provided and the legal basis for each denial of access. The Complainant requests that the Custodian respond by noon on December 17, 2007.

December 20, 2007

Letter from the Complainant to the Custodian. The Complainant thanks the Custodian as well as City Administrator Andrew McCrosson for contacting the Complainant via telephone on December 19, 2007. The Complainant states that she is

¹ No legal representation listed on record.

² Represented by John Scott Abbott, Esq. (Margate, NJ).

³ The Complainant states in her Denial of Access Complaint that the Custodian received the OPRA request and date stamped it on November 29, 2007.

aware that no records responsive to the Complainant's OPRA request have been provided to the Custodian's office yet, but that Mr. McCrosson is working to ensure the production of the records sought. The Complainant further states that Mr. McCrosson has stated that he expects to have the requested records delivered to the Custodian by 4 pm on December 20, 2007. The Complainant states that she called the Custodian around 2 pm and was advised that no records responsive had been delivered yet. The Complainant finally advises that this letter is being sent via facsimile prior to 4 pm in order to document the events as they have transpired.

December 21, 2007

Letter from the Complainant to the Custodian. The Complainant states that this letter confirms the status of her OPRA request. The Complainant states that although the appropriate officials promised delivery of the requested records to the Custodian on this date, the Complainant has been informed by the Custodian that no records have been provided for disclosure.

December 21, 2007

E-mail from Mr. McCrosson to the Custodian. Mr. McCrosson states that an employee of the Municipal Administrator's Office will provide the records responsive to the Complainant's request. Mr. McCrosson further states that per Counsel, the requisite copies of records concerning the 6500 block of Ventnor Avenue have already been provided to the Custodian for disclosure.

December 24, 2007

E-mail from the Custodian to Mr. McCrosson. The Custodian states that the Clerk's Office has not received any records from Counsel. The Custodian states that she informed the Complainant of Counsel's failure to provide records to the Clerk's Office. The Custodian states that she will notify the Complainant of the number of records in the Custodian's possession once all pages have been counted.

December 24, 2007

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventeenth (17th) business day following receipt of such request. The Custodian indicates on the Complainant's OPRA request form that 329 pages of records (with the exception of records pertaining to the 6500 block of Ventnor Avenue not provided by Counsel) are available for pick-up at a cost of \$82.25.

December 24, 2007

Letter from the Complainant to the Custodian. The Complainant states that she has received notification that the Custodian has gathered records responsive to this request at a cost of \$82.25. The Complainant further states that she is aware that Counsel claims that he already provided the records pertaining to the 6500 block of Ventnor Avenue, but that the Custodian advised the Complainant that she has not received such records to this date. The Complainant further states that it appears as though Counsel is in possession of records relevant to a number of the request items and has failed to provide the records responsive to the Custodian. The Complainant states that due to the substantial lapse of time in responding to this request and the incomplete response

presumably prepared by Counsel, the Complainant is filing a Denial of Access Complaint with the GRC.

December 24, 2007

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

- Complainant’s OPRA request dated November 23, 2007.
- Letter from the Complainant to the Custodian dated December 14, 2007.
- Letter from the Complainant to the Custodian dated December 20, 2007.
- E-mail from the Mr. McCrosson to the Custodian dated December 21, 2007.
- Letter from the Complainant to the Custodian dated December 21, 2007.
- E-mail from the Custodian to Mr. McCrosson dated December 24, 2007.
- Custodian’s response to the Complainant’s OPRA request dated December 24, 2007.
- Letter from the Complainant to the Custodian dated December 24, 2007.

The Complainant states that she sent an OPRA request dated November 23, 2007 to the Custodian following the Thanksgiving holiday. The Complainant states that due to the length of the request, she did not insist upon the statutorily mandated seven (7) business day response time if it would impair the completeness of the Custodian’s response to the request.

The Complainant states that she contacted the Custodian via telephone on December 14, 2007 to inquire about the status of this request and was informed that the Custodian had not yet received the records responsive to this request from the City officials in possession of them. The Complainant asserts that the Custodian seemed annoyed that no records had been delivered. The Complainant states that she contacted the GRC on December 14, 2007 and was advised to document all events that occur in regards to this OPRA request.

The Complainant states that on December 24, 2007, the Custodian told her that all City officials in possession of the requested records, with the exception of Counsel, had produced at least some of the records responsive to the Complainant’s OPRA request. The Complainant further asserts that Counsel claimed to have delivered the records, but the Custodian denied ever receiving anything from Counsel. The Complainant asserts that according to the Custodian, Counsel acknowledged that he failed to forward the records to the Custodian on December 24, 2007 and that Counsel’s office is the storage location for most of the documents relating to the City’s legal affairs. The Complainant further alleges that she was informed that Counsel admitted to knowing exactly where the records responsive to the 6500 block of Ventnor Avenue request were, but had not yet supplied the records to the Custodian.

The Complainant further states that the records responsive were delivered to the Custodian the morning of December 24, 2007. The Complainant further states that Counsel provided none of the records responsive that pertain to the City’s legal matters. The Complainant contends that these facts alone suggest that an intentional and willful denial of timely access to public records has occurred. The Complainant finally alleges

that the conduct of an official or officials seems to be aimed at dissuading members of the public from exercising the right of access afforded under OPRA.⁴

December 27, 2007

Letter from the Complainant to the Custodian. The Complainant requests that the following be sent to her:

1. A copy of the Complainant's OPRA request form bearing the City of Ventnor's date stamp of November 29, 2007.
2. A copy of any e-mails or similar correspondence dated December 21, 2007, which was sent by the Custodian or any other City official, which pertained to the status of the Complainant's OPRA request.
3. A copy of any e-mails or similar correspondence dated December 24, 2007 which the Custodian or the Clerk's Office sent in response to the December 21, 2007 communication stating that there had been no delivery of the requested records.

December 31, 2007

Memo from the Custodian to the Complainant. The Custodian states that Counsel delivered the remaining portion of the records responsive to the Complainant's OPRA request. The Custodian states that there are 100 pages and that the cost will be \$25. The Custodian finally states that the total copying costs for this OPRA request will be \$107.25 for 429 pages of records at \$.25 a copy.

January 8, 2008

E-mail from the Complainant to the GRC. The Complainant states that production of records responsive to the Complainant's November 23, 2007 OPRA request was made by all City officials except Counsel on December 24, 2007. The Complainant further states that Counsel produced the requested records on December 31, 2007.

The Complainant asserts that after reviewing the records, she found that many of the records requested were missing despite Counsel's representation that all records responsive were disclosed. The Complainant alleges that the number of City officials who may have violated OPRA is expanding and that there seems to have been some official misconduct within the City's government in regards to granting access to the requested records.

January 10, 2008

Letter from the Complainant to the Custodian attaching the Complainant's OPRA request. The Complainant states that all records delivered to the Complainant on December 24, 2007 and December 31, 2007 have been reviewed, and that contrary to Mr. McCrosson's representation that the City of Ventnor intended to fully respond to the Complainant's OPRA request, a substantial denial of access has occurred.

⁴The Complainant also presents additional information that is not relevant to this complaint. Paula DeLuca v. City of Ventnor (Atlantic), 2008-08 – Findings and Recommendations of the Executive Director

The Complainant further alleges that based on the dates of some of the printouts provided, she believes City officials spent much of the time between November 29, 2007 and December 24, 2007 plotting to defeat both the spirit and letter of OPRA.

The Complainant attaches a marked-up copy of her OPRA request, which she states contains the list of records sought through OPRA in black ink, the finding after review of the disclosed records in red ink, and, where applicable, further comments from the Complainant in blue ink. The Complainant states that the copies furnished to the Custodian should be provided to the five (5) City officials who are in possession of the requested records. The Complainant demands that City officials locate records in their possession which are responsive to outstanding items of the OPRA request and provide them.

January 11, 2008

E-mail from the Complainant to the GRC. The Complainant declines mediation. The Complainant contends that the City of Ventnor has not formally denied access to the requested records but that she received no reply to the OPRA request until after the Complainant sent a letter to the Custodian on December 14, 2007. The Complainant further alleges that although the City eventually did release records to the Complainant, careful review of the documents revealed that some of the records were denied without any specific basis for denial.

January 14, 2008

Request for the Statement of Information sent to the Custodian.

January 17, 2008

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated November 23, 2007.
- Letter from the Complainant to the Custodian dated December 14, 2007.
- Letter from the Complainant to the Custodian dated December 20, 2007.
- E-mail from the Mr. McCrosson to the Custodian dated December 21, 2007.
- Letter from the Complainant to the Custodian dated December 21, 2007.
- E-mail from the Custodian to Mr. McCrosson dated December 24, 2007.
- Custodian's response to the Complainant's OPRA request dated December 24, 2007.
- Letter from the Complainant to the Custodian dated December 24, 2007.
- Memo from the Custodian to the Complainant dated December 31, 2007.
- Letter from the Complainant to the Custodian attaching the Complainant's OPRA request dated January 10, 2008.

The Custodian certifies that her search for the requested records included disseminating the Complainant's November 23, 2007 OPRA request to the City officials in possession of the requested records. The Custodian states that Mr. McCrosson coordinated the retrieval of all records and, in order to avoid confusion and duplication, collected all the records responsive from the various departments and delivered them in one packet to the Custodian on December 24, 2007, with the exception of Counsel's records pertaining to the 6500 block of Ventnor Avenue. The Custodian states that

following the delivery of both sets of records, the Custodian contacted the Complainant and informed her that the records were ready for pickup.

The Custodian states that she received the Complainant's November 23, 2007 OPRA request on November 29, 2007. The Custodian states that the Complainant advised in her cover letter that due to the length of the request, the statutorily mandated seven (7) business day time frame in which the Custodian had to respond was not required and that she agreed in advance to any extension of time the Custodian needed to prepare the records responsive. The Custodian asserts that the City's policy is to disseminate the request to any City officials that may have possession of records responsive to the request, which the Custodian did upon receipt of the request.

The Custodian states that from November 29, 2007 to December 21, 2007, Mr. McCrosson handled the collection of the records and submitted them to the Custodian for disclosure on December 24, 2007. The Custodian states that the packet of records for disclosure consisted of 329 pages of records but did not include material concerning the 6500 block of Ventnor Avenue, which Mr. McCrosson asserts was submitted directly to the Custodian by Counsel. The Custodian states that Counsel submitted to her the requested records in his possession pertaining to the 6500 block of Ventnor Avenue on December 31, 2007, at which time the Complainant was notified of their availability by facsimile, and the Complainant retrieved the records on January 2, 2008.

The Custodian states that on January 10, 2008, she received a letter from the Complainant regarding what the Complainant considered to be a partial denial of access to the requested records. The Custodian states that the letter recapitulated the OPRA request and requested additional records. The Custodian states that the letter was distributed to City officials and that Mr. McCrosson gathered 2,351 pages of records that the Complainant retrieved on January 17, 2008.

The Custodian contends that at no time were the records requested intentionally denied, either partially or in their entirety, by the City of Ventnor. The Custodian contends that the City believed it was being fair with this request, considering that the form, complexity and volume of the request made interpretation of the records requested difficult in some instances and resulted in the inadvertent omission of records in other instances. The Custodian alleges that, as evidenced by the rapid response and extensive volume of records disclosed in response to the Complainant's January 10, 2007 letter, the City of Ventnor is clearly making every effort to respond fully to the Complainant's request.

January 18, 2008

Letter from Counsel to the GRC. Counsel asserts that he wishes to supplement the Custodian's SOI by clarifying that he was not requested to supply any records between November 29, 2007 and December 21, 2007. Counsel contends that on December 21, 2007, Mr. McCrosson advised Counsel that the Custodian had indicated that Counsel had not provided any records concerning the 6500 block of Ventnor Avenue.

Counsel contends that he was unable to speak with the Custodian regarding the request until December 27, 2007, at which time he was advised by the Custodian specifically which records were required from Counsel. Counsel finally contends that he spent a number of hours to locate and duplicate various records and submitted such records to the Custodian on December 31, 2007.

February 22, 2008

E-mail from the Complainant to the GRC. The Complainant alleges that she found numerous instances where records which the Custodian portrayed in the SOI as being completely disclosed were not located among the records provided by the Custodian. The Complainant further alleges that the SOI prepared by Counsel addresses only part of the requests and those instances where there were at least some records provided. The Complainant contends that the City answered requests for bills by providing printouts of payments rather than copies of the actual bills.

The Complainant asks the GRC what happens in a situation where there appears to be an on-going concealment or a wrongful refusal to provide records or an improper and premature destruction of records.

Additionally, the Complainant alleges that Mr. McCrosson responded to her on December 21, 2007 asserting that no records responsive existed to the request for notes taken or e-mails generated pertaining to an executive session meeting with the Mayor of the City of Ventnor, City of Margate Mayor, a New Jersey Department of Environmental Protection (“NJDEP”) representative and other officials because he did not set up the meeting. The Complainant states that Mr. McCrosson then produced his own notes, contrary to his December 21, 2007 response, only after the filing of this complaint and the Complainant’s subsequent January 10, 2007 demand for all records still outstanding.

The Complainant contends that the Custodian is blameless in this situation and has expressed annoyance over how the Complainant’s request has been handled by City of Ventnor officials.

March 11, 2008

The Complainant’s response to the Custodian’s SOI. The Complainant asserts that after reviewing \$580 worth of records provided on January 16, 2008, the City has in significant measure denied access to the records sought in the Complainant’s OPRA request.

The Complainant alleges that although the Custodian’s SOI listed twenty-one (21) records at issue, the original OPRA request was for forty-four (44) separate enumerated records. The Complainant further advises that the Custodian is not in actual possession of any of the records to which access has been denied. The Complainant further contends that the arguments made by Counsel in the SOI about the efforts taken to comply with the request pursuant to OPRA are belied by evidence she provided and is contained within the GRC’s case file.

The Complainant further asserts that she sent a copy of the set of records provided to her on December 24, 2007 to the GRC to illustrate that the City made no effort to grant

access to the requested records until after the Complainant's telephone call on December 19, 2007 to Mr. McCrosson.

March 17, 2008

Letter from the Complainant to the GRC.⁵

March 20, 2008

Letter from Counsel to the GRC attaching a City of Ventnor official OPRA request form. Counsel states that he has received the Complainant's March 11, 2008 correspondence. Counsel contends that various City officials, including himself, have expended over one hundred (100) hours in response to the Complainant's numerous and voluminous requests. Counsel further contends that all records requested within the City's possession have been provided to the Complainant. Counsel asserts that neither he nor Mr. McCrosson have any reason to withhold any records.

Counsel states that he has attached a copy of the City's official OPRA request form and advises that it may be appropriate for the Complainant to make her request in a simplified manner on the form for those items that she feels have not been provided or addressed in the SOI.

April 9, 2008

E-mail from the Complainant to the GRC. The Complainant alleges that the Custodian notified her on April 7, 2008 that additional records responsive had been delivered to the Custodian and were ready for pickup. The Complainant states that both Mr. McCrosson and Counsel submitted letters to the Complainant following her March 11, 2008 supplemental filing.

The Complainant contends that Mr. McCrosson's memo in response to the Complainant's OPRA request states that notes from three (3) different meetings do not exist. The Complainant alleges that these note-less meetings are contrary to the Open Public Meetings Act ("OPMA") and that the City of Ventnor did not keep "insufficient" records, but rather no records at all.

May 23, 2008

Letter from the Complainant to the GRC. The Complainant requests that she would like the GRC to continue investigation of this complaint even though the City officials involved have been voted out of office.

The Complainant states that her November 23, 2007 OPRA request was date stamped November 29, 2007 by the Custodian. The Complainant further asserts that the cover letter accompanying her request authorized additional response time to the City due to the fact that some request items spanned a number of years and it might take more than the statutorily mandated seven (7) business day time frame to comply with the request. The Complainant contends that she would have preferred to make one trip for all of the records instead of several trips. The Complainant further asserts the Custodian could have responded within the statutorily mandated seven (7) business day time frame requesting

⁵ The Complainant reiterates the points she made in the March 11, 2008 letter about Counsel's submissions in the SOI.

additional time to respond if the Custodian thought the request could be a substantial disruption or that the requested billing records were archived.⁶

Analysis

Whether the Custodian responded to the Complainant's November 23, 2007 OPRA request in a timely manner?

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 provides that:

Immediate access ordinarily shall be granted to budgets, bills, vouchers, *contracts*, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information. (Emphasis added) N.J.S.A. 47:1A-5.e.

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*

⁶The Complainant reiterates previous points regarding incidents not pertaining to this complaint and the City's noncompliance of the Complainant's request pursuant to OPRA.
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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.

The Complainant asserts that she waived the statutorily mandated seven (7) business day time frame to respond based on the complexity of this request for numerous records, some spanning a number of years. The Custodian responded seventeen (17) business days after receipt of the Complainant’s request providing access to 329 pages of records. Therefore, there is no violation of the statutorily required response time because the Complainant waived the statutorily mandated seven (7) business day time frame to respond. This waiver by the Complainant presumably also applies to the immediate access records.⁷

The Complainant later takes issue with the length of time that the Custodian took to respond in writing; however, she previously waived the response time effectively negating any arguments against the Custodian not responding within the statutorily mandated seven (7) business day response time.

Whether the Complainant’s November 23, 2007 request for records is broad and unclear?

OPRA states that:

“[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor *and a brief description of the government record sought...*” N.J.S.A. 47:1A-5.f. (Emphasis added).

The Complainant’s forty-four (44) paragraph November 23, 2007 OPRA request sought access to copies of numerous records of the City of Ventnor including e-mails, facsimiles, memoranda, bills, contracts, settlement records and information spanning in some cases nearly ten (10) years. On December 24, 2007, the Custodian granted the

⁷ OPRA provides that: “[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, *contracts*, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added) N.J.S.A. 47:1A-5.e.

Complainant access to 329 pages of records at a cost of \$82.25. The Custodian provided 100 additional pages of records to the Complainant on December 31, 2007 at a cost of \$25. The Custodian provided an additional 2,351 pages of records on January 17, 2008.

The Complainant alleges that access to many of the records requested in the November 23, 2007 OPRA request has been partially or completely denied and that the amount of time in which the City officials responded is a clear sign of a knowing and willful violation of OPRA.

The Custodian's Counsel contends that five (5) city officials, including himself, spent over one hundred (100) hours combined to respond to the Complainant's multi-part and voluminous OPRA request in its entirety. Additionally, the Custodian contends that the City of Ventnor has made every effort to respond to the Complainant's OPRA request, considering the form, complexity and volume of the request and the difficulty of identifying all records responsive.

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),⁸ 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."⁹

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..."

⁸ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁹ As stated in Bent, *supra*.

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008) the Council held that “[b]ecause the Complainant’s OPRA requests # 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).”

In the matter before the Council, which is similar to New Jersey Builders Association, *supra*, the Complainant’s November 23, 2007 OPRA request consists of forty-four (44) items for e-mails, facsimile memorandum, bills, contracts, settlement records and information, some requests spanning nearly ten (10) years worth of records. The Custodian, as well as five (5) city officials spent over 100 hours on this request, which the City of Ventnor contends is voluminous and complex. Additionally, the Custodian provided access to over 2,700 pages of records on three (3) separate dates. Although the request seeks identifiable government records, it is voluminous and overly broad. Such requests are invalid under OPRA pursuant to MAG. Moreover, because OPRA does not require custodians to research files or compile records which do not otherwise exist, the Complainant’s November 23, 2007 OPRA request constitutes an invalid request for records. See MAG, *supra*.

Based upon the Appellate Division’s decision in New Jersey Builders Association v. New Jersey Council On Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) the Complainant’s voluminous November 23, 2007 OPRA request, a forty-four (44) paragraph request including numerous records spanning nearly ten (10) years, is not a valid OPRA request because it bears no resemblance to the record request envisioned by the Legislature, which is one submitted on a form that “provide[s] space for . . . a brief description of the record sought.” *Id.* at 179. See also Vessio v. Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007), Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2006-220 (September 2007), MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).

Whether handwritten meeting notes are exempt from disclosure pursuant to OPRA?

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* ... The terms *shall not include inter-agency or intra-agency advisory, consultative, or deliberative material*” (Emphasis added.) N.J.S.A. 47:1A-1.1.

The Complainant requested handwritten meeting notes made by the City of Ventnor representatives at a particular meeting held between January 2003 and August 2003.

In O'Shea v. West Milford Board of Education, 391 N.J. Super. 534 (App. Div. 2007), the Complainant appealed a GRC final decision denying access to copies of handwritten notes taken by the Board of Education ("BOE") secretary during executive session. The Court upheld the GRC's decision and further ruled that "it is clear that ... the preparation of formal minutes is the Secretary's "official business" and that the formal minutes themselves, not the Secretary's handwritten notes, are the public record."

Therefore, the handwritten notes of the City of Ventnor representatives at a particular meeting held between January 2003 and August 2003 are not subject to disclosure because they are not a public record pursuant to O'Shea, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. There is no violation of the statutorily required response time because the Complainant waived the statutorily mandated seven (7) business day time frame to respond. This waiver by the Complainant presumably also applies to the immediate access records.
2. Based upon the Appellate Division's decision in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) the Complainant's voluminous November 23, 2007 OPRA request, a forty-four (44) paragraph request including numerous records spanning nearly ten (10) years, is not a valid OPRA request because it bears no resemblance to the record request envisioned by the Legislature, which is one submitted on a form that "provide[s] space for . . . a brief description of the record sought." Id. at 179. *See also* Vessio v. Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007), Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2006-220 (September 2007), MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).
3. The handwritten notes of the City of Ventnor representatives at a particular meeting held during the period of January 2003 to August 2003 are not subject to disclosure because they are not a public record pursuant to O'Shea v. West Milford Board of Education, 391 N.J. Super. 534 (App. Div. 2007).

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Executive Director

December 10, 2008