



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
Web Address:
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

February 25, 2009 Government Records Council Meeting

Kenneth Mayer
Complainant

Complaint No. 2008-167

v.

Township of Middle (Cape May)
Custodian of Record

At the February 25, 2009 public meeting, the Government Records Council ("Council") considered the February 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 pursuant to Naples v. New Jersey Motor Vehicle Commission, GRC Complaint No. 2008-97 (December 2008), N.J.S.A. 47:1A-9.a. and N.J.S.A. 28:8-62, the Custodian lawfully denied access to the requested record under 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 25th Day of February, 2009

Robin Berg Tabakin, Chair
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: March 9, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Kenneth Mayer¹
Complainant**

GRC Complaint No. 2008-167

v.

**Township of Middle (Cape May)²
Custodian of Records**

Records Relevant to Complaint: Marriage certificate of Edward B. Moore and Rita L. Guggiari, also known as Rita L. Moore, issued between November 2002 and present.

Request Made: July 2, 2008

Response Made: July 16, 2008

Custodian: James Alexis

GRC Complaint Filed: August 1, 2008³

Background

July 2, 2008

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.

July 16, 2008

Custodian's response to the OPRA request, attaching requirements for requesting a marriage certificate issued within the last fifty (50) years. The Custodian responds in writing to the Complainant's OPRA request on the first (1st) business day following receipt of such request.⁴ The Custodian states that access to the requested record is denied because the request lacks information necessary to request a marriage certificate pursuant to the guidelines for obtaining vital statistics records from the New Jersey Department of Health and Senior Services, Vital Statistics Registration ("DHS") and Executive Order No. 18 (McGreevey, 2002)("E.O. No. 18").

August 1, 2008

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

¹ No legal representation listed on record.

² No legal representation listed on record.

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

⁴ The evidence of record shows that the Complainant's OPRA request was received by the Township of Middle on July 10, 2008 and forwarded to the Custodian, who received the request on July 15, 2008 and promptly responded.

- Complainant's OPRA request dated July 2, 2008, containing the Custodian's note thereon.
- Guidelines for requesting a marriage certificate issued within the last fifty (50) years.
- Copy of a Township of Middle "Public Records Request Response" form.

The Complainant states that he mailed his OPRA request to the Township of Middle on July 2, 2008. The Complainant states that on July 16, 2008, he received a copy of the original request form with an additional sheet of paper containing the guidelines for requesting a marriage certificate issued within the last fifty (50) years.⁵ The Complainant states that the guidelines require that a requestor provide an exact date of marriage and indicate that multiple years will not be searched. Further, the Complainant states that the guidelines require that a requestor provide his/her relationship to the subject persons named in the record.

The Complainant asserts that the records sought are public records. The Complainant argues that the Custodian has no authority under OPRA to refuse searching for the requested record or limit the search to a single year. The Complainant states that the Custodian was provided with a reasonable time frame to locate the requested record. Further, the Complainant argues that the Custodian has no authority to demand or require that the Complainant provide a relationship connection to the persons identified in the Complainant's request.⁶

The Complainant asserts that the Custodian failed to provide the Complainant with a specific denial on the "Public Records Request Response." Further, the Complainant asserts that the Custodian failed to provide a specific basis for the denial of access to the requested record. Finally, the Complainant asserts that the Custodian failed to retain an original copy of the Complainant's OPRA request and did not provide the Complainant with information regarding the appeals process afforded under OPRA.⁷

The Complainant did not agree to mediate this complaint.

August 6, 2008

Request for the Statement of Information sent to the Custodian.

August 13, 2008

E-mail from Custodian to the GRC. The Custodian advises that per a telephone conversation with the GRC, the Statement of Information is being sent overnight via Fed Ex and should arrive on August 14, 2008.

⁵ The Complainant states that certain portions of the guidelines were highlighted.

⁶ The Complainant states that it should be noted that OPRA permits anonymous requests.

⁷ The GRC does not have the authority to determine whether the Custodian should retain an original copy of the OPRA request form pursuant to N.J.S.A. 47:1A-7.b. Records retention is governed by the Department of Archives and Records Management ("DARM"). Additionally, the evidence of record shows that the OPRA request form provided to the Complainant contained important information regarding the rights of a requestor, including the appeals process.

August 13, 2008

E-mail from the GRC to the Custodian. The GRC acknowledges the telephone conversation and extends the deadline to submit the Statement of Information until August 14, 2008.

August 14, 2008

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

- Complainant's OPRA request dated July 2, 2008.
- Complainant's OPRA request dated July 2, 2008, containing the Custodian's note thereon.
- Guidelines for requesting a marriage certificate issued within the last fifty (50) years.
- Copy of a Township of Middle "Public Records Request Response" form.
- Executive Order No. 18 (McGreevey, 2002).
- Guidelines for obtaining vital statistics records from DHS.

The Custodian states that he received the Complainant's July 2, 2008 OPRA request on July 15, 2008 and promptly responded on the first (1st) business day after receipt of the request stating that the request could not be fulfilled. The Custodian further states that he attached guidelines for obtaining a marriage certificate issued within the past fifty (50) years to the original OPRA request containing the Custodian's response therein.

The Complainant contends that he is relying on the guidelines set forth by DHS and E.O. No. 18. The Custodian asserts that multiple years will not be searched.

August 18, 2008

Letter from the Complainant to the GRC. The Complainant requests that he be allowed to submit a rebuttal to the Custodian's SOI.

September 17, 2008

Letter from the GRC to the Complainant. The GRC states that *N.J.A.C. 5:105-2* sets forth the complaint process, including which submissions a party must provide to the GRC. Further, the GRC states that *N.J.A.C. 5:105-2* does not expressly afford a response to the SOI. The GRC advises that, as a matter of practice, any additional submissions which provide new information or evidence relevant to the instant complaint will be considered.

October 20, 2008

The Complainant's response to the Custodian's SOI. The Complainant states that the Custodian's reliance on E.O. No. 18 is misplaced because it expired on September 14, 2005 when P.L. 2005, C. 222 was enacted. The Complainant states that E. O. No. 18 sets forth that:

"Certificates may be issued in other circumstances and shall state that they are for informational purposes only, and are not to be used for identification or legal purposes." E.O. No. 18.

The Complainant asserts that E.O. No. 18 does not preclude a requestor from obtaining an uncertified copy of the requested certificate nor does it provide that a requestor must provide a relationship connection.

Further, the Complainant argues that E.O. No. 18 does not provide a limitation on searches for certificates issued in the last fifty (50) years, therefore making the Custodian's refusal to conduct a search to locate the requested record unlawful pursuant to OPRA. The Complainant asserts that DHS has no lawful authority to impede access to marriage certificates by issuing any directive or instructions to a local registrar or promulgate any forms more stringent than or in conflict with the provisions of E.O. No. 18.

The Complainant states that P.L. 2005, C. 222, § 32 replaced E.O. No. 18 when the law was enacted by Governor Codey because the language found in N.J.S.A. 26:8-62 mirrors E.O. No. 18. The Complainant reiterates that the provisions do not preclude the Complainant from obtaining an uncertified marriage certificate marked "for informational purposes only...."

The Complainant contends that the Custodian's SOI is fatally flawed because no document index was provided and the Custodian failed to include a signed certification.⁸

Finally, the Complainant asserts that the Custodian has willfully violated OPRA by failing to search for the requested marriage certificate, unlawfully denying access and failing to provide a complete SOI. The Complainant requests that the GRC impose appropriate penalties upon the Custodian.

Analysis

Whether the Custodian unlawfully denied access to the requested marriage certificate?

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.

OPRA further provides that:

"*a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in [OPRA] shall be*

⁸ The GRC is in possession of the Custodian's signed certification on page 5 of the SOI form. The Custodian did not provide a document index on the basis that no record was identified as responsive because the Custodian did not conduct a search prior to denying access to the requested marriage certificate.

construed as affecting in any way the common law right of access to any record...” (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 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 also provides that:

“*[t]he provisions of [OPRA] shall not abrogate or erode any...grant of confidentiality...recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict access.*” (Emphasis added.) N.J.S.A. 47:1A-9.b.

Executive Order No. 18 (McGreevey, 2002) states that:

“*Certificates may be issued in other circumstances and shall state that they are for informational purposes only, and are not to be used for identification or legal purposes...[t]his order shall take effect until such time as the requirements set forth...are passed into law by the Legislator and approved by the Governor.*” (Emphasis added.)

N.J.S.A. 26:8-62.a provides that:

“[t]he State registrar or local registrar *shall*, upon request, supply to a person who establishes himself as one of the following: the subject of the record of a...*marriage*, as applicable; the subject’s parent, legal guardian or other legal representative; the subject’s spouse, child grandchild or sibling...[c]ertificates *may be issued* in other circumstances and shall state that they are for *informational purposes only*, and are not to be used for identification or legal purposes. The registrar *shall authenticate* the *identity of the requestor and the requestor’s relationship with the subject of the vital record.*” (Emphasis added.)

Moreover, N.J.S.A. 26:8-62.d. provides that:

“[n]otwithstanding any other provision of this section to the contrary, the Commissioner of Health and Senior Services shall designate specifications for uniform forms for the issuance of all vital records, which shall be used by registrars beginning on a date established by the commissioner. The *form designated for certified copies of vital records* shall contain *safety features for authentication purposes* and to *deter forgery*, and shall be *readily distinguishable* from the *form designated for certifications of vital records*. Local registrars may include in the fee for a certified copy the additional cost of the form containing such safety features.

The commissioner *may issue and enforce orders* to implement the provisions of this subsection.” (Emphasis added.)

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 asserts the Custodian’s denial of access is unlawful because not only did N.J.S.A. 26:8-62 replace E.O. No. 18 in September, 2005, but both the expired executive order and the statute contain a clause allowing for certificates to be issued for informational purposes only. The Complainant also asserts that the Custodian had no authority under OPRA to refuse to search for the requested certificate. The Complainant contends that the Custodian failed to retain a copy of the original OPRA request, failed to advise the Complainant on the appeals process and failed to return a certified signature and document index with the SOI.⁹

Conversely, the Custodian asserts the requested record is exempt because the Complainant failed to follow the guidelines for requesting a marriage certificates issued within the last fifty (50) years as required in E.O. No. 18 and set forth by DHS.

OPRA provides that its provisions shall not “abrogate any...grant of confidentiality...recognized by...statute...which privilege or grant of confidentiality may duly be claimed to restrict access.” N.J.S.A. 47:1A-9.b.

In N.J.S.A. 26:8-62.a., which superseded E.O. No. 18, a state registrar is charged with providing vital statistics records to those requestors who establish themselves as the subject of the record, the subject’s immediate family or other legal representative. The state registrar is also charged with authenticating the identity of the requestor and his or her relationship to the subject of the vital record.

Additionally, N.J.S.A. 26:8-62.d. provides that uniform forms be created by the Commissioner of DHS for the purpose of requesting vital statistics records. N.J.S.A.

⁹ See footnotes No. 7 and No. 8.

26:8-62.d. provides that the uniform request form contain safety features for authentication purposes.

In Naples v. New Jersey Motor Vehicle Commission, GRC Complaint No. 2008-97 (December 2008), the Complainant sought medical records held at the Motor Vehicle Commission (“MVC”). The Custodian cited to the Driver Privacy Protection Act (“DPPA”), which provides guidelines which require a requestor to provide identification and a required form in order to obtain medical records containing personal information from MVC. The GRC held that the process of requesting records from MVC does not fall under the authority of the GRC pursuant to N.J.S.A. 47:1A-7.b.

In this complaint, the Custodian herein denied access to the requested records pursuant to E.O. No. 18, which was superseded by N.J.S.A. 26:8-62 on September 14, 2005. N.J.S.A. 26:8-62 requires the use of a form when requesting vital statistics records, whether those records are certified or for informational purposes. N.J.S.A. 26:8-62.d. As in Naples, supra, the statute at issue requires the use of a particular form when requesting vital statistics records such as marriage certificates. As such, the process of requesting vital statistics records from local registrars does not fall under the authority of the GRC. Therefore, pursuant to Naples, supra, N.J.S.A. 47:1A-9.a. and N.J.S.A. 28:8-62, the Custodian lawfully denied access to the requested record under N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that pursuant to Naples v. New Jersey Motor Vehicle Commission, GRC Complaint No. 2008-97 (December 2008), N.J.S.A. 47:1A-9.a. and N.J.S.A. 28:8-62, the Custodian lawfully denied access to the requested record under N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

February 18, 2009