



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

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

November 18, 2009 Government Records Council Meeting

Frank Amoresano
Complainant

Complaint No. 2008-170

v.

Rowan University
Custodian of Record

At the November 18, 2009 public meeting, the Government Records Council (“Council”) considered the November 10, 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’s OPRA request seeks information rather than specific identifiable government records, the request items are invalid pursuant to 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).

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 November, 2009

Robin Berg Tabakin, Chair
Government Records Council

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



Harlynn A. Lack, Secretary
Government Records Council

Decision Distribution Date: November 23, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 18, 2009 Council Meeting**

**Frank Amoresano¹
Complainant**

GRC Complaint No. 2008-170

v.

**Rowan University²
Custodian of Records**

Records Relevant to Complaint: Copy of all fines levied by the Division of Pensions to the Rowan University Human Resources Department (“HR”) from July 1, 2007 to June 26, 2008 for late, delinquent enrollment or failure to remove employees from the Public Employees’ Retirement System (“PERS”), Associated British Ports pension system (“ABP”), Teachers Insurance Annuity Association – College Retirement Equities Fund (“TIAA-CREF”), or the Police and Fire pension system.

Request Made: June 26, 2008

Response Made: July 2, 2008

Custodian: Marguerite Carbonaro-Davey³

GRC Complaint Filed: August 4, 2008⁴

Background

June 26, 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 2, 2008

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the fourth (4th) business day following receipt of such request. The Custodian states that access to the requested record is denied because the Complainant’s OPRA request is not a valid request for government records. The Custodian states that general requests for information are invalid pursuant to OPRA and that State agencies are only required to comply with requests for identifiable government records.

¹ No legal representation listed on record.

² Represented by DAG Cheryl Clarke, on behalf of the NJ Attorney General.

³ The Custodian originally named in this complaint is Richard Hale.

⁴ The GRC received the Denial of Access Complaint on said date.

August 4, 2008

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching the Complainant’s OPRA request dated June 26, 2008 with the Custodian’s undated response thereon.

The Complainant states that he submitted an OPRA request to Rowan University on June 26, 2008. The Complainant states that the Custodian responded in writing on the Complainant’s official OPRA request form stating that the Complainant’s request is a request for information and not a request for identifiable government record.⁵

The Complainant argues that the requested information was previously provided to two (2) other requestors in the past and should be provided in this instance.

The Complainant agrees to mediate this complaint.

August 14, 2008

Offer of Mediation sent to both parties.

August 20, 2008

The Custodian agrees to mediate this complaint.

August 22, 2008

Complaint referred to mediation.

July 22, 2009

Complaint referred back from mediation.

July 30, 2009

Letter from the GRC to the Complainant. The GRC informs the Complainant that he has the opportunity to amend this Denial of Access Complaint prior to the GRC’s request for the Statement of Information from the Custodian. The GRC states that the Complainant Counsel’s response is due by close of business on August 7, 2009.

August 10, 2009

Request for the Statement of Information (“SOI”) sent to the Custodian.

August 12, 2009

E-mail from the Custodian’s Counsel to the GRC. Counsel requests an extension until August 27, 2009 to provide the requested SOI.

August 12, 2009

E-mail from the GRC to the Custodian’s Counsel. The GRC grants an extension until August 27, 2009 to submit the requested SOI.

⁵ The Complainant states that the Custodian’s response on the form was not signed or dated by the Custodian.

August 27, 2009

Custodian's SOI attaching the Complainant's OPRA request dated June 26, 2008 with the Custodian's undated response thereon.⁶

The Custodian certifies that she received the Complainant's OPRA request on June 26, 2008. The Custodian certifies that she mailed the Complainant's official OPRA request form with her response to the Complainant via regular and certified mail on July 2, 2008. The Custodian certifies that she denied access to the Complainant's request as a request for information and not an identifiable government record.

The Custodian's Counsel argues that the Custodian properly denied access to the Complainant's request because said request fails to identify the specific records sought. Counsel asserts that the Complainant requests a category of records spanning over more than one year's time. Counsel asserts that the Custodian would have to research her files in order to find any records responsive to the Complainant's request.

Counsel asserts that the Custodian's denial is strongly supported by case law. Counsel states that the court held in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) that "[u]nder OPRA, agencies are required to disclose only 'identifiable' governmental records not otherwise exempt. Wholesale requests for general information, to be analyzed, collated, and compiled by the responding governmental entity are not encompassed therein. In short, OPRA does not countenance open-ended searches of an agency's files." Counsel states that in Gannett New Jersey Partners, LP v. County of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005) the court, citing MAG, added that "OPRA requires a party requesting access to a public record to specifically describe the document sought."

Additionally, Counsel states that in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), 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. OPRA does not authorize unbridled searches of an agency's property."

Counsel states that in a more recent Appellate Division holding, New Jersey Builders Association v. Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court, again citing to MAG, stated that the requestor's obligation to specifically describe the document sought is essential to a public agency's obligation and ability to provide a prompt response under OPRA. Counsel states that the court held that "[w]hen a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA ..."

⁶ The SOI was signed by acting custodian Joseph F. Scully, Jr., Chief Financial Officer, because the Custodian of Record retired on August 20, 2009.
Frank Amoresano v. Rowan University, 2008-170 – Findings and Recommendations of the Executive Director

Finally, Counsel argues that the Custodian properly denied access to the Complainant's OPRA request because said request failed to identify the particular records being sought by the Complainant.⁷

Analysis

Whether the Complainant's OPRA request is a valid OPRA request?

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 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 the instant matter before the Council, the Complainant requested "all fines levied by the Division of Pensions to the HR from July 1, 2007 to June 26, 2008 for late, delinquent enrollment or failure to remove employees from PERS, ABP, TIAA-CREF, or the Police and Fire pension system." The Custodian responded in writing on July 2, 2008, stating that the Complainant's request failed to identify a specific government record.

The Complainant's OPRA request is a request for information and not a request for specifically identifiable government records.

⁷ The Custodian does not certify to the search undertaken or whether any records responsive were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").
Frank Amoresano v. Rowan University, 2008-170 – Findings and Recommendations of the Executive Director

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

In the instant complaint, the Complainant's request for "all fines" levied by the Division of Pensions to Rowan University HR fails to identify specific identifiable government records and would have forced the Custodian to research all files in his possession to locate and identify responsive records containing the fines levied by the Division of Pensions. OPRA does not require that Custodians conduct research to fulfill requests. See MAG, *supra* and Bent, *supra*.

Therefore, because the Complainant's OPRA request seeks information rather than specific identifiable government records, the request items are invalid pursuant to MAG, *supra* and Bent, *supra*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's OPRA request seeks information rather than specific identifiable government records, the request items are invalid pursuant to 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).

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

November 10, 2009

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

⁹ As stated in Bent, *supra*.