



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

September 30, 2009 Government Records Council Meeting

Mary Burke
Complainant

Complaint No. 2008-65

v.

Borough of Brielle (Monmouth)
Custodian of Record

At the September 30, 2009 public meeting, the Government Records Council (“Council”) considered the September 23, 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:

1. Because the Custodian certified that he is not the Custodian of Records for the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad, and because the Custodian certified that he forwarded the Complainant’s OPRA request to the appropriate Custodians on November 26, 2007 and notified the Complainant in writing of such on December 3, 2007, the Custodian has not unlawfully denied access to the Complainant’s OPRA request, and the Custodian has properly forwarded said request to the appropriate Custodians pursuant to N.J.S.A. 47:1A-5.h.
2. Because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant’s request requires an open-ended search of the Fire Company’s and the First Aid Squad’s files, the Complainant’s OPRA request is invalid. As such, the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad have 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), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Further, because the Complainant’s OPRA request is invalid, the Council declines to determine



whether the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad are considered public agencies under OPRA.

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 30th Day of September, 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, Secretary
Government Records Council

Decision Distribution Date: October 7, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 30, 2009 Council Meeting**

**Mary Burke¹
Complainant**

GRC Complaint No. 2008-65

v.

**Borough of Brielle (Monmouth)²
Custodian of Records**

Records Relevant to Complaint: All financial records of the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad from January 1, 2007 to November 26, 2007.

Request Made: November 26, 2007

Response Made: December 3, 2007

Custodian: Thomas Nolan, Municipal Clerk

GRC Complaint Filed: March 18, 2008³

Background

November 26, 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 26, 2007

Custodian forwards Complainant's OPRA request to the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad.

November 28, 2007

Letter from Thomas Condon, Secretary of Brielle Volunteer Fire Company No. 1, to Custodian. The Secretary states that he is in receipt of the Custodian's letter dated November 26, 2007, along with the Complainant's OPRA request. The Secretary states that he will consult with legal counsel regarding the disclosure of the requested records. The Secretary states that if legal counsel determines that the Complainant is entitled to financial records of a volunteer non-profit agency, he will provide the Complainant with same.

¹ No legal representation listed on record.

² Represented by Nicholas C. Montenegro, Esq., of Montenegro, Thompson, Montenegro & Genz (Brick, NJ).

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

December 3, 2007

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request. The Custodian states that the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad are private, not-for-profit corporations. The Custodian states that both organizations receive funding from the Borough of Brielle and all payments made on their behalf are subject to public access. The Custodian states that he can make said records available to the Complainant if desired.

However, the Custodian also states that he is not the Custodian of Records for the Brielle Volunteer Fire Company No. 1, or the Brielle First Aid Squad. The Custodian states that he forwarded the Complainant's OPRA request to both organizations. The Custodian states that he does not have the authority to compel said organizations to release the requested records to the Complainant.

December 4, 2007

Letter from Brielle First Aid Squad's Counsel to Complainant. Counsel states that the First Aid Squad is a private corporation, not a government entity. Counsel asserts that the First Aid Squad is not subject to OPRA. Additionally, Counsel contends that the Complainant's request for all financial records is overly broad.

March 18, 2008

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

- Complainant's OPRA request dated November 26, 2007
- Letter from Thomas Condon, Secretary of Brielle Volunteer Fire Company No. 1, to Custodian dated November 28, 2007
- Custodian's response to the Complainant's OPRA request dated December 3, 2007
- Letter from Brielle First Aid Squad's Counsel to Complainant dated December 4, 2007

The Complainant states that she submitted her OPRA request to the Borough of Brielle on November 26, 2007. The Complainant states that the Custodian denied access to her request via letter dated December 3, 2007. The Complainant also states that the Brielle First Aid Squad denied access to her request via letter dated December 4, 2007.

Additionally, the Complainant does not agree to mediate this complaint.

April 15, 2008

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

April 18, 2008

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated November 26, 2007

- Letter from Thomas Condon, Secretary of Brielle Volunteer Fire Company No. 1, to Custodian dated November 28, 2007
- Custodian’s response to the Complainant’s OPRA request dated December 3, 2007
- Letter from Brielle First Aid Squad’s Counsel to Complainant dated December 4, 2007

The Custodian certifies that he received the Complainant’s OPRA request on November 26, 2007. The Custodian certifies that he forwarded the Complainant’s OPRA request to the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad on said date. The Custodian certifies that the requested records are not maintained by the Borough. The Custodian also certifies that both agencies receive an operating subsidy from the Borough. The Custodian certifies that he will provide records pertaining to this subsidy to the Complainant if requested, however, said records are not the records requested in the Complainant’s November 26, 2007 OPRA request. Further, the Custodian certifies that he provided a written response to the Complainant’s request on December 3, 2007.

June 15, 2009

Letter from GRC to Custodian. The GRC requests a legal certification from the Custodian indicating whether or not he is the Custodian of Records for the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad.

June 16, 2009

Custodian’s Certification. The Custodian certifies that he is not the Custodian of Records for the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad.

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 states that:

“[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.” N.J.S.A. 47:1A-5.h.

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.

Additionally, OPRA states that if any public employee receives an OPRA request, said employee must either direct the requestor to the appropriate custodian, or forward the request to the appropriate custodian. N.J.S.A. 47:1A-5.h.

In this complaint, the Complainant stated that she submitted her OPRA request to the Borough of Brielle. In her OPRA request, the Complainant sought access to the financial records of the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad. The Custodian certified that he does not maintain any records responsive to said request. Additionally, the Custodian certified that he is not the Custodian for either the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad. The Custodian certified that he forwarded to the Complainant’s OPRA request to said agencies on November 26, 2007. The Custodian also certified that he provided the Complainant with a written response indicating such on December 3, 2007, the fifth (5th) business day following the Custodian’s receipt of said request.

Therefore, because the Custodian certified that he is not the Custodian of Records for the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad, and because the Custodian certified that he forwarded the Complainant’s OPRA request to the appropriate custodians on November 26, 2007 and notified the Complainant in writing of such on December 3, 2007, the Custodian has not unlawfully denied access to the Complainant’s OPRA request and the Custodian has properly forwarded said request to the appropriate custodians pursuant to N.J.S.A. 47:1A-5.h.

However, the Complainant also alleges that the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad have unlawfully denied access to her OPRA request. Specifically, in a letter dated November 28, 2007, the Brielle Volunteer Fire Company No. 1 indicated to the Custodian that the Fire Company would look into

whether records of a non-profit organization can be disclosed under OPRA.⁴ Further, the Brielle First Aid Squad denied access to the Complainant's OPRA request on the basis that said agency is a private corporation and is not subject to OPRA. Additionally, the Brielle First Aid Squad contended that the Complainant's request for all financial records is overly broad.

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),⁵ 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."⁶

Additionally, in New Jersey Builders Association v. New Jersey Council on 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..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) 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 this instant complaint, the Custodian sought access to all financial records of the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad from January 1, 2007 to November 26, 2007. However, the Complainant failed to provide any more detail regarding what type of financial records she sought. For example, financial records could encompass budgets, bills, vouchers, payroll records, check registers, receipts, etc. The Complainant's request for financial records requires an open-ended search of the Fire

⁴ The Custodian forwarded said letter to the Complainant on December 3, 2007.

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁶ As stated in Bent, *supra*.

Company's and the First Aid Squad's files. Said request fails to identify with reasonable clarity the records sought.

Therefore, because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant's request requires an open-ended search of the Fire Company's and the First Aid Squad's files, the Complainant's OPRA request is invalid. As such, the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad have not unlawfully denied access to the requested records pursuant to MAG, supra, Bent, supra, NJ Builders, supra, and Schuler, supra. Further, because the Complainant's OPRA request is invalid, the Council declines to determine whether the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad are considered public agencies under OPRA.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian certified that he is not the Custodian of Records for the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad, and because the Custodian certified that he forwarded the Complainant's OPRA request to the appropriate Custodians on November 26, 2007 and notified the Complainant in writing of such on December 3, 2007, the Custodian has not unlawfully denied access to the Complainant's OPRA request, and the Custodian has properly forwarded said request to the appropriate Custodians pursuant to N.J.S.A. 47:1A-5.h.
2. Because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant's request requires an open-ended search of the Fire Company's and the First Aid Squad's files, the Complainant's OPRA request is invalid. As such, the Brielle Volunteer Fire Company No. 1 and the Brielle First Aid Squad have 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), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Further, because the Complainant's OPRA request is invalid, the Council declines to determine whether the Brielle Volunteer Fire Company No. 1 or the Brielle First Aid Squad are considered public agencies under OPRA.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

September 23, 2009