



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Acting Commissioner

**FINAL DECISION**

**February 28, 2012 Government Records Council Meeting**

Ursula Cargill  
Complainant

Complaint No. 2009-09

v.

New Jersey Department of Education  
Custodian of Record

At the February 28, 2012 public meeting, the Government Records Council (“Council”) considered the February 21, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that because Complainant’s records request of September 29, 2008 (before the Appellate Division’s decision in the matter of Renna v. County of Union, 407 N.J. Super. 230 (May 21, 2009)) was not submitted on an official OPRA request form, it is not a valid OPRA request pursuant to N.J.S.A. 47:1A-5.f., N.J.S.A. 47:1A-5.g., 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 Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005); therefore, the Custodian did not unlawfully deny access to the requested record.

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 28<sup>th</sup> Day of February, 2012

Robin Berg Tabakin, Esq., Chair  
Government Records Council



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

Denise Parkinson Vetti, Esq., Secretary  
Government Records Council

**Decision Distribution Date: March 5, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 28, 2012 Council Meeting**

**Ursula Cargill<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-09**

v.

**New Jersey Department of Education<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Case # IAU-08-003, Compliance Investigation Report

**Request Made:** September 29, 2008

**Response Made:** September 29, 2008

**Custodian:** John Hart<sup>3</sup>

**GRC Complaint Filed:** January 2, 2009<sup>4</sup>

**Background**

**September 29, 2008**

Complainant's records request. The Complainant requests the records relevant to this complaint listed above in an e-mail to Mr. Dave Corso ("Mr. Corso"), Director, Office of Administration and Human Resources, New Jersey Department of Education ("DOE"). The Complainant requests that this e-mail be accepted as an official request for a copy of the record and inquires if there is a form that needs to be completed.

**September 29, 2008**

E-mail from Mr. Corso to the Complainant. Mr. Corso states that access to the requested record is denied because the State Ethics Commission ("SEC") has not made a ruling on the matter. Mr. Corso further states that once the SEC has made a ruling he will disclose the record.<sup>5</sup>

**September 29, 2008**

E-mail from the Complainant to Mr. Corso. The Complainant thanks Mr. Corso for his response and states that she looks forward to hearing from him.

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

<sup>2</sup> Represented by DAG Susan Huntley, on behalf of the NJ Attorney General.

<sup>3</sup> The current Custodian is Maria Casale.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

<sup>5</sup> Mr. Corso is the custodian for the Office of Administration and Human Resources within the Department of Education. However, the record request was in the context of Complainant's ongoing requests for records and information related to an ethics investigation and did not mention OPRA.

**January 2, 2009**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching e-mails between herself and Mr. Corso.<sup>6</sup>

The Complainant alleges that she made repeated requests for various records related to an investigation. The Complainant states that Mr. Corso denied her request because the case was pending until it was adjudicated by the SEC.

### Analysis

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

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.

The Complainant’s September 29, 2008 request was submitted by e-mail to Mr. Corso as one of numerous e-mail exchanges regarding an ongoing investigation. OPRA was not mentioned in the request.

Review of the OPRA statute and its legislative intent lead the Council to conclude that use of the request form is required for all requestors. The statute provides that the custodian “shall adopt a form for the use of any person who requests access to a

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<sup>6</sup> Complainant attaches additional documents which are not relevant to the adjudication of this Complaint. Ursula Cargill v. NJ Department of Education, 2009-09 – Findings and Recommendations of the Executive Director

government record held or controlled by the public agency.” N.J.S.A. 47:1A-5.f. The statute specifically prescribes what must be on the form:

- (1) space for the name, address and phone number of the requestor and a brief description of the government record sought;
- (2) space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged;
- (3) specific directions and procedures for requesting a record;
- (4) a statement as to whether prepayment of fees for a deposit is required;
- (5) the time period in which the public agency is required by OPRA to make the record available;
- (6) a statement of the requestor’s right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- (7) space for the custodian to list reasons if a request is denied in whole or in part;
- (8) space for the requestor to sign and date the form;
- (9) space for the custodian to sign and date the form if the request is fulfilled or denied.

*Id.*

Although the statute does not expressly state that OPRA requests must be on the form adopted by the agency pursuant to N.J.S.A. 47:1A-5.f., principles of statutory construction show that the Legislature intended use of this form by all requestors to be mandatory. In interpreting a statute, it is axiomatic that “each part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole.” Matturi v. Bd. of Trustees of JRS, 173 N.J. 368, 383 (2002), quoting In re Passaic Cty. Utilities Auth., 164 N.J. 270, 300 (2000). In addition, a construction which renders statutory language meaningless must be avoided. Bergen Comm. Bank v. Sisler, 157 N.J. 188, 204 (1999). *See also* G.S. v. Dept. of Human Serv., 157 N.J. 161, 172 (1999). (a statute should be interpreted so as to give effect to all of its provisions, without rendering any language inoperative, superfluous, void, or insignificant).

As noted, N.J.S.A. 47:1A-5.f. requires that custodians adopt a request form, and sets forth a detailed list of what the form must contain. The next subsection of the statute provides:

If 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.* (Emphasis added.) N.J.S.A. 47:1A-5.g.

The form to which N.J.S.A. 47:1A-5.g. refers is the form required by N.J.S.A. 47:1A-5.f. In providing, in 5.g., that the custodian “shall” sign and date the form, indicate the basis for denial on the form, and return the form to the requestor, the Legislature evidenced its clear intent that it is mandatory for the form to be used by requestors. *See* Harvey v. Essex Cty. Bd. Of Freeholders, 30 N.J. 381, 391-92 (1959)

(the word “shall” in a statute is generally mandatory). The express requirement that the custodian use the request form in denying an OPRA request, construed together with the preceding statutory requirement that the custodian adopt a request form, demonstrates that the Legislature intended that this form would be used for all OPRA requests. If all requestors are not required to submit requests on the form prescribed by the statute, then the statutory provisions requiring the custodian to sign and date the form, and return it to the requestor, would be meaningless. Indeed, a custodian would be unable to fulfill these express requirements of N.J.S.A. 47:1A-5.g. if the requestor does not use the form in submitting his request.

Accordingly, nothing in OPRA suggests that some requestors may forgo using the official request form. In enacting the form requirement, the Legislature has expressed its policy that use of the form promotes clarity and efficiency in responding to OPRA requests, consistent with OPRA’s central purpose of making government records “readily accessible” to requestors. N.J.S.A. 47:1A-1.

The Appellate Division has indicated that the statute’s form requirement serves the additional purpose of prompting the legislative policy that a requestor must specifically describe identifiable records sought. *See* MAG Entertainment LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (an open-ended request that fails to identify records with particularity is invalid). In Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30, 33 (App. Div. 2005), the Court held that the requestor’s general request for information violated this policy and was therefore invalid. In reaching this conclusion, the Court noted that OPRA mandates that the request form provide space for a “brief description” of the record request. *Id.* Similarly, in Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205, 213 (App. Div. 2005), the Court specifically pointed to the same statutory request form requirement in determining that OPRA does not authorize requestors to make blanket requests for agency records.

Accordingly, at the time of this request and based on the language of the statute, as well as judicial recognition of the importance of the statutory request form, it is determined that the statute required all requestors to submit OPRA requests on an agency’s official OPRA records request form. However, since the date of this records request (September 29, 2008), the Court has held that “the form should be used, but no request for information should be rejected if such form is not used.” Thus, custodians **must** respond to records requests in accordance with the requirements of OPRA for requests on an agency’s official OPRA request form, as well as written non-form records request which mention “OPRA.” *See* Renna v. County of Union, 407 N.J. Super. 230 (May 21, 2009).

The Complainant’s September 29, 2008 records request was submitted by e-mail to Mr. Corso as one of numerous e-mail exchanges regarding an ongoing investigation. OPRA was not mentioned in the request.

Because Complainant’s records request of September 29, 2008 (before the Appellate Division’s decision in the matter of Renna, supra) was not submitted on an official OPRA records request form, it is not a valid OPRA request pursuant to N.J.S.A. 47:1A-5.f., N.J.S.A. 47:1A-5.g., 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 Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005); therefore, the Custodian did not unlawfully deny access to the requested record.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because Complainant's records request of September 29, 2008 (before the Appellate Division's decision in the matter of Renna v. County of Union, 407 N.J. Super. 230 (May 21, 2009)) was not submitted on an official OPRA request form, it is not a valid OPRA request pursuant to N.J.S.A. 47:1A-5.f., N.J.S.A. 47:1A-5.g., 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 Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005); therefore, the Custodian did not unlawfully deny access to the requested record.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

February 21, 2012<sup>7</sup>

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<sup>7</sup> This complaint was prepared for adjudication on August 4, 2009; however, said complaint was not adjudicated due to the Council's lack of quorum.