



**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*

LORI GRIFA  
*Commissioner*

**FINAL DECISION**

**February 24, 2011 Government Records Council Meeting**

Ronald T. Leto  
Complainant

Complaint No. 2009-11

v.

Borough of Franklin Lakes (Bergen)  
Custodian of Record

At the February 24, 2011 public meeting, the Government Records Council (“Council”) considered the February 15, 2011 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 request for the records relevant to the complaint fails to seek specific identifiable government records, the Complainant’s request is overly broad and is therefore invalid under OPRA 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 the Council’s decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records.

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 24<sup>th</sup> Day of February, 2011



Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: March 1, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 24, 2011 Council Meeting**

**Ronald T. Leto<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-11**

v.

**Borough of Franklin Lakes (Bergen)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Request to view all complaints regarding services or personnel of the Borough from 2007 to November 14, 2008, including these records and reports and the dates given to the Council.
2. Request to view all inspections of the duties and responsibilities of any elected or appointed official and any department of the Borough from 2007 to November 14, 2008, including these inspections and reports and the dates given to the Council.

**Request Made:** November 14, 2008

**Response Made:** November 24, 2008

**Custodian:** Sally T. Bleeker, Borough Clerk

**GRC Complaint Filed:** January 5, 2009<sup>3</sup>

**Background**

**November 14, 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.

**November 24, 2008**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the sixth (6<sup>th</sup>) business day following receipt of such request. The Custodian states that she will have an answer to the OPRA request by December 5, 2008.

**December 4, 2008**

Letter from the Custodian to the Complainant. The Custodian informs the Complainant that his request is overly broad and unclear and she asks the Complainant to clarify his request with more specificity regarding the records he is seeking. The Custodian cites MAG Entertainment, LLC v. Division of Alcoholic Beverage Control,

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

<sup>2</sup> Represented by Jonathan D. Ash, Esq., DeCotiis, FitzPatrick, Cole & Wisler (Teaneck, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

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, LP v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2004) in support of her position.

**January 5, 2009**

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

- Complainant’s OPRA request dated November 14, 2008
- Custodian’s response to the OPRA request dated November 24, 2008
- Letter from the Custodian to the Complainant dated December 4, 2008

The Complainant states that he had a conversation with the Custodian on November 14, 2008 wherein the Custodian told the Complainant that she did not understand the request with respect to referencing “personnel.” The Complainant contends that he told the Custodian that the requested records are reports that are created by the Town Administrator and provided to the Council.

The Complainant agrees to mediate this complaint.

**January 21, 2009**

Offer of Mediation sent to the Custodian.

**January 22, 2009**

The Custodian agrees to mediate this complaint.

**January 22, 2009**

The complaint is referred for mediation.

**December 2, 2009**

The complaint is referred back from mediation to the GRC for adjudication.

**December 3, 2009**

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

**December 3, 2009**

Telephone call from the Custodian’s Counsel to the GRC. The Custodian’s Counsel requests an extension of time until December 21, 2009 to complete and return the SOI.

**December 3, 2009**

E-mail from the GRC to the Custodian’s Counsel. The GRC grants the Custodian an extension of time until December 21, 2009 to complete and return the SOI.

**December 17, 2009**

Telephone call from the Custodian’s Counsel to the GRC. The Custodian’s Counsel requests an additional extension of time until December 28, 2009 to complete and return the SOI.

**December 17, 2009**

E-mail from the GRC to the Custodian’s Counsel. The GRC grants the Custodian an extension of time until December 28, 2009 to complete and return the SOI.

**December 23, 2009**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated November 14, 2008
- Custodian’s response to the OPRA request dated November 24, 2008
- Letter from the Custodian to the Complainant dated December 4, 2008<sup>4</sup>

The Custodian certifies that no records responsive to the Complainant’s request were destroyed pursuant to the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that she responded to the Complainant’s OPRA request dated November 14, 2008 on November 24, 2008, wherein she informed the Complainant that she would have an answer to his request by December 5, 2008. The Custodian certifies that she needed the time to consult with legal counsel. The Custodian further certifies that she sent a letter to the Complainant dated December 4, 2008, wherein she informed the Complainant that his request was overly broad and unclear pursuant to MAG, *supra*, Bent, *supra*, and Gannett, *supra*. The Custodian certifies that OPRA requires a party requesting access to a public record to specifically describe the document sought. The Custodian certifies that the document was not specifically described in the OPRA request and that her attempt to seek clarification or a greater understanding of the request did not amount to a denial of access. The Custodian additionally certifies that the Complainant was uncooperative in helping the Custodian to better understand the Complainant’s OPRA request.<sup>5</sup>

**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:

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<sup>4</sup> The SOI contained several other attachments but the attachments were regarding communications which transpired during the mediation process and therefore will not be considered by the GRC in the adjudication of this complaint.

<sup>5</sup> The Custodian went on to certify that more information about the request was discovered during the mediation process; however information that is disclosed in the course of mediation and not otherwise obtainable is confidential, for settlement purposes only, will not be considered by the GRC in the adjudication of this complaint.

“... 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 evidence of record reveals that the Custodian received the Complainant’s OPRA request on November 14, 2008 and responded in writing to said request in a timely manner on November 24, 2008, which was the sixth (6<sup>th</sup>) business day following receipt of the request. The Custodian informed the Complainant in the response that she would have an answer to the OPRA request by December 5, 2008. The evidence of record further reveals that the Custodian sent a letter to the Complainant dated December 4, 2008, wherein she informed him that the request was overly broad and unclear pursuant to MAG, supra, Bent, supra, and Gannett, supra. The Custodian asked the Complainant in the letter to clarify his request with more specificity regarding the records he is seeking so that she could provide an identifiable government record. The Custodian certified that the Complainant was uncooperative in helping the Custodian to better understand the request.

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.

In determining that MAG Entertainment’s request for “all documents or records” from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

“[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.” *Id.*

Further, in Bent v. Stafford Police Department, 381 N.J.Super. 30, 37 (App. Div. 2005),<sup>6</sup> 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.”<sup>7</sup>

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...” 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...”

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).”

Lastly, this matter is substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J.Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester for documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into,

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<sup>6</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>7</sup> As stated in Bent, *supra*.

approved or accepted from 1/1/2006 to present.” *Id.* at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at 515-16.

In the present complaint, the Complainant requested to view all complaints regarding services or personnel of the Borough and all inspections of the duties and responsibilities of any elected or appointed official and any department of the Borough from 2007 to November 14, 2008, including these records/inspections and reports and the dates given to the Council. There are so many contingencies in this request that it would be unlikely, without more clarification, that the Custodian could identify a specific record responsive to the Complainant’s request with any certainty. And, unlike in Burnett, *supra*, the request included several different types of documents (complaints regarding services, complaints regarding personnel, inspections of duties and responsibilities of any elected or appointed official, and inspections of duties and responsibilities of any department of the Borough), thus precluding the Council from upholding the request under Burnett, *supra*.

Therefore, because the Complainant’s request for the records relevant to the complaint fails to seek specific identifiable government records, the Complainant’s request is overly broad and is therefore invalid under OPRA pursuant to MAG, *supra*, Bent, *supra*, New Jersey Builders, *supra*, and the Council’s decision in Schuler, *supra*. Accordingly, the Custodian has not unlawfully denied the Complainant access to said records.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant’s request for the records relevant to the complaint fails to seek specific identifiable government records, the Complainant’s request is overly broad and is therefore invalid under OPRA 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 the Council’s decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records.

Prepared By: John E. Stewart, Esq.  
Mediator

Approved By: Catherine Starghill, Esq.  
Executive Director

February 15, 2011