



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

June 29, 2010 Government Records Council Meeting

Laura Tracey-Coll
Complainant

Complaint No. 2009-206

v.

Elmwood Park Board of Education (Bergen)
Custodian of Record

At the June 29, 2010 public meeting, the Government Records Council (“Council”) considered the June 22, 2010 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 “all documents” related to the installation of playground equipment fails to specifically identify government records sought, and because the Complainant’s request for Board of Education minutes fails to specify a particular date and would also require the Custodian to conduct research to locate responsive records, and because the Complainant’s request for licenses fails to provide names, date ranges, or any other means of identifying responsive records, and because the Complainant’s request for “all other paperwork” fails to specify identifiable government records, the request is invalid under OPRA. See 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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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 29th Day of June, 2010

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: July 13, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 29, 2010 Council Meeting**

**Laura Tracey-Coll¹
Complainant**

GRC Complaint No. 2009-206

v.

**Elmwood Park Board of Education (Bergen)²
Custodian of Records**

Records Relevant to Complaint:

1. All documents in regard to swings, ball throw, curbing and mulch installed at the Gilbert Avenue School during 2008-2009.
2. The minutes from the Board of Education accepting the above equipment as a “donation.”
3. The licenses of all contractors and landscaping permits.
4. Any other paperwork, i.e., invoices, bids, bills, funding, etc.³

Request Made: June 16, 2009³

Response Made: June 18, 2009

Custodian: William P. Moffitt

GRC Complaint Filed: July 1, 2009⁴

Background

June 16, 2009

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.

June 18, 2009

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the 2nd (second) business day following receipt of such request. The Custodian states that the following documents are available for on-site review:

1. Abstract of Board of Education minutes supporting the submission of the Open

¹ No legal representation listed on record.

² Represented by Matthew DeMaria, Esq. (Elmwood Park, NJ).

³ Complainant’s Denial of Access Complaint is inconsistent with the Complainant’s original request.

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

³ Although the Complainant’s OPRA request was dated June 10, 2009, the Custodian certified in the SOI that he did not receive such request until June 16, 2009.

- Public Space Grant Application.
2. Grant application file.
 3. Business Office records for subject reimbursement.

June 18, 2009

E-mail from the Complainant to the Custodian. The Complainant clarifies the OPRA request and states that she is seeking all documents and e-mails concerning funding sources, approvals, purchasing paperwork, Board of Education minutes, public notices, licenses, permits, inspectors and any additional documentation for the playground at the Gilbert Avenue School in Elmwood Park, NJ.

June 18, 2009

Letter from the Custodian to the Complainant. The Custodian states that he tried to contact the Complainant three (3) times to clarify the Complainant's OPRA request. After consulting with the Board of Education's Attorney and Superintendent, the Custodian states that the following documents are available for on-site review:

1. Board of Education minutes supporting the Open Public Space Grant Application.
2. Grant application file.
3. Business Office records for subject reimbursement.

June 19, 2009

E-mail from the Complainant to the Custodian. The Complainant asks the Custodian to explain what is unclear about her OPRA request and to make all other requested records ready for the Complainant's review.

June 22, 2009

E-mail from the Complainant to the GRC. The Complainant states that the Custodian would not supply her with any information regarding the vendor, installer, NJ construction license number, any purchase orders, invoices, checks, or Board of Education Minutes approving any transactions with regard to the playground equipment and construction.

The Complainant also asserts that she received a phone call from the Custodian on June 17, 2009 stating that her request was too broad. The Complainant states that she responded to the Custodian in an e-mail on June 18, 2009 providing him with details of the request. The Complainant further states that she later received another phone call from the Custodian stating that the request had to be refined.

The Custodian also states that on June 18, 2009 the Complainant received a certified letter from the Custodian stating that he consulted with the Board of Education's Attorney and Superintendent and offering to supply Board of Education matching grant documents. The Complainant asserts that she supplied the Custodian with these documents and that the Custodian did not include all the OPRA documents requested.

July 1, 2009

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

- Complainant’s OPRA request dated June 10, 2009
- Letter from the Custodian to the Complainant dated June 18, 2009
- E-mail from the Complainant to the Custodian dated June 18, 2009
- E-mail from the Complainant to the Custodian dated June 19, 2009
- E-mail from the Complainant to the GRC dated June 22, 2009

The Complainant does not agree to mediate this complaint.

The Complainant asserts that on June 6, 2009, she made a request for records pertaining to the recent construction of a playground project at Gilbert School in Elmwood Park, NJ during 2008-2009. The Complainant further asserts that the Custodian refuses to provide any records regarding the vendor or the installer and the corresponding New Jersey construction license numbers, any purchase orders, invoices, checks, or Board of Education minutes approving any transactions in regard to the equipment and construction.

The Complainant further asserts that she does not believe that the Board of Education has any records regarding the playground.

The Complainant contends that although she believes that her OPRA request is very straightforward, the Custodian has requested additional details stating that the request is too broad in scope. The Complainant further contends that on June 17, 2009, the Custodian left a telephone message for the Complainant in which the Custodian stated that if additional details regarding the request were not forthcoming, then he would send a letter denying the request due to the incomprehensiveness of said request. The Complainant asserts that she provided additional details regarding the records sought on June 18, 2009. The Complainant further asserts that the Custodian again requested additional specificity.

The Complainant contends that during a subsequent telephone conversation, the Custodian acknowledged receiving the Complainant’s e-mail dated June 18, 2009 but needed to speak with her. The Complainant further contends that she again e-mailed the Custodian stating that she preferred to be contacted by e-mail rather than telephone during the day.

The Complainant also asserts that on June 18, 2009 she received a letter from the Custodian via certified mail in which the Custodian indicated that he consulted the Board of Education’s Attorney and the Superintendent and offered to supply the Complainant Board of Education matching grant records. The Complainant asserts that these are not all of the government records she requested. The Complainant further asserts that the Custodian charged her \$25 for copies to be provided at an onsite review without allowing the Complainant the opportunity to review or approve such charges.

July 31, 2009

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

August 4, 2009

Letter from Custodian’s Counsel to the GRC. Counsel states that the Custodian is on vacation until August 17, 2009 and requests an extension of time until August 21, 2009 to submit the completed SOI.

August 4, 2009

Letter from the GRC to Custodian’s Counsel. The GRC grants the Custodian Counsel’s request for an extension of time to August 21, 2009 to submit the completed SOI.

August 20, 2009

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated June 10, 2009
- Letter from the Custodian to the Complainant dated June 18, 2009
- US Postal Service certified mail delivery receipt request dated June 19, 2009
- Copy of envelope to the Complainant showing certified mail return receipt request

The Custodian certifies that he received the Complainant’s OPRA request on June 16, 2009. The Custodian further certifies that he called the Complainant to discuss the request. The Custodian certifies that he left a message stating that the Complainant’s request for the principal contract was straightforward and that she would be charged copying costs for said request. The Custodian further certifies that he stated that the Complainant’s request regarding playground equipment was too broad in scope and if she was looking for specific information, the parents’ association may have the requested records.

The Custodian certifies that he telephoned the Complainant on June 17, 2009 to discuss the request for records pertaining to playground equipment. The Custodian further certifies that on June 18, 2009, he received the Complainant’s e-mail in response to the Custodian’s voice message dated June 17, 2009. The Custodian certifies that he telephoned the Complainant to discuss the request and the Complainant’s e-mail. The Custodian further certifies that he was unable to speak to the Complainant, and instead drafted a letter regarding the request for playground equipment records.

The Custodian certifies that his search for the requested records involved Board of Education minutes supporting the application for the Open Public Space Grant, Grant application file, and business office records subject to reimbursement.

August 25, 2009

E-mail from the Complainant to the GRC. The Complainant states that she has received the Custodian’s SOI. The Complainant attaches a copy of the audio file of a voice message left by the Custodian for the Complainant.

The Complainant states that she had to specify her request further or the Custodian would deny her request. Additionally, the Complainant asserts that the Custodian never told her to contact the parents' association for such specific information. The Complainant asserts that the school should be the official custodian of records in case of liability.

The Complainant contends that the Custodian should have told the Complainant what additional information was needed. Also, the Complainant asserts that the Custodian should have provided records about the Gilbert School playground installation and not just grant information. The Complainant also asserts that the school construction was not funded with grants and the Board of Education's approval should have been in June 2009. Lastly, the Complainant states that she has serious questions about the safety of the playground equipment.

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 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 this case, the Complainant asserts that her request for records was very straightforward. In addition, she argues that the records supplied to her were not the records she requested. Conversely, the Custodian contends that the request was too broad in scope and that he has made several attempts to contact the Complainant in order to refine her request.

The Complainant's June 10, 2009 request is invalid under OPRA because it is overly broad and would require the Custodian to conduct research. 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),⁴ 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."⁵

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. 2007-51 (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

⁴ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁵ As stated in Bent, *supra*.

(App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

The Complainant’s request for “all documents” related to the installation of playground equipment fails to specifically identify government records sought. Moreover, the Complainant’s request for Board of Education minutes fails to specify a particular date and would require the Custodian to conduct research among all of the Board of Education meeting minutes between 2008 and 2009 to locate those minutes containing the Board’s acceptance of equipment donated to the Gilbert Avenue School during 2008-2009. The Complainant’s request for licenses fails to provide names, date ranges, or any other means of identifying responsive records. Finally, the Complainant’s request for “all other paperwork” fails to specify identifiable government records.

Because the Complainant’s request for “all documents” related to the installation of playground equipment fails to specifically identify government records sought, and because the Complainant’s request for Board of Education minutes fails to specify a particular date and would also require the Custodian to conduct research to locate responsive records, and because the Complainant’s request for licenses fails to provide names, date ranges, or any other means of identifying responsive records, and because the Complainant’s request for “all other paperwork” fails to specify identifiable government records, the request is invalid under OPRA. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant’s request for “all documents” related to the installation of playground equipment fails to specifically identify government records sought, and because the Complainant’s request for Board of Education minutes fails to specify a particular date and would also require the Custodian to conduct research to locate responsive records, and because the Complainant’s request for licenses fails to provide names, date ranges, or any other means of identifying responsive records, and because the Complainant’s request for “all other paperwork” fails to specify identifiable government records, the request is invalid under OPRA. See 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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

June 22, 2010