



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

**FINAL DECISION**

**December 21, 2010 Government Records Council Meeting**

Alyson Librizzi  
Complainant

Complaint No. 2009-213

v.

Township of Verona Police Department (Essex)  
Custodian of Record

At the December 21, 2010 public meeting, the Government Records Council (“Council”) considered the December 14, 2010 *Reconsideration* 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 has failed to establish in her motion for reconsideration of the Council’s August 24, 2010 Final Decision that 1) the GRC's decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 21<sup>st</sup> Day of December, 2010



Robin Berg Tabakin, Chair  
Government Records Council

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

James W. Requa, Secretary  
Government Records Council

**Decision Distribution Date: January 4, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***  
**Supplemental Findings and Recommendations of the Executive Director**  
**December 21, 2010 Council Meeting**

**Alyson Librizzi<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2009-213**

v.

**Township of Verona Police Department (Essex)<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** “All of the information from the Verona Police Department Detective Bureau’s investigation of CC # 8007534 of continuation and two additional items (2 letters of the victim’s): one dated June 2, 2008 and the other dated July 28, 2008. All information...must include the first and last names of the Platinum Fitness employees questioned or in questioning and the last names of employees and/or managers: Phil, Dan and Justin, regardless of what their employee titles/status were during the period of March 2008 to July 2008 and/or June and July 2008.”

**Request Made:** June 1, 2009

**Response Made:** June 12, 2009 and June 15, 2009

**Custodian:** Chief Douglas Huber

**GRC Complaint Filed:** July 9, 2009<sup>3</sup>

**Background**

**August 24, 2010**

Government Records Council’s (“Council”) Final Decision. At its August 24, 2010 public meeting, the Council considered the August 17, 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, found that:

1. The Custodian’s Counsel provided the Complainant access to the records identified in her request (police reports and two (2) letters authored by the Complainant).
  
2. The Complainant’s request for all information pertaining to the police investigation is not a valid OPRA request because it fails to identify any specific

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

<sup>2</sup> Represented by Paul J. Giblin, Sr., Esq., of Giblin & Giblin (Oradell, NJ).

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

government record pursuant to 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). This portion of the Complainant's request is overly broad.

3. The police reports provided to the Complainant contained the full names of two (2) Platinum Fitness employees and to the extent that the requested names do not appear on the records already provided to the Complainant, the Custodian was under no obligation to create a record in response to the Complainant's OPRA request.

### **August 30, 2010**

Council's Interim Order distributed to the parties.

### **September 28, 2010**

Complainant's Request for Reconsideration citing "extraordinary circumstances" as the basis for said request. The Complainant claims that circumstances prevented her from filing her Request for Reconsideration by the prescribed timeframe in the GRC's regulations.

The Complainant contends that the Council's decision dated August 24, 2010 holding that the Complainant's OPRA request did not seek specifically identifiable government records is not valid for several reasons. First, the Complainant states that she spoke to Detective Kraus from the Police Department and sought the full names of the four (4) Platinum Fitness managers during the period of March 2008 to June or July of 2008 when the Complainant was allegedly harassed by said managers. The Complainant states that the Detective advised her that he could not provide her with the last names of the managers because it was confidential information. The Complainant states that she asked the Detective for the document name and number of the investigation report the Complainant filed regarding the alleged harassment involving the Platinum Fitness managers. The Complainant states that the Detective did not provide her with any document name or number. As such, the Complainant states that she filed the OPRA request which is the subject of this Denial of Access Complaint. The Complainant states that in said request, she sought access to the last names of the four (4) managers of Platinum Fitness during the period of March 2008 to June or July of 2008. The Complainant states that she also requested all information from the police investigation of the July 28, 2008 incident report no. 8007534 which also has a continuation report and two (2) letter attachments addressed to Charles Hebeke, the owner of Platinum Fitness. The Complainant asserts that her OPRA request was very specific and not overly broad. The Complainant contends that the police department was "quibbling over words that were verbose to them."

Further, the Complainant states that in response to her OPRA request, the Police Department provided her with documents that she already possessed, namely the police

incident report no. 8007535, its continuation report and the two (2) letters the Complainant wrote to the owner of Platinum Fitness.

Additionally, the Complainant states that the GRC's reference to Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005) is not a valid case reference because the Complainant's OPRA request did identify specific information. The Complainant states that she was as specific as possible considering Detective Kraus refused to provide her with any document names or numbers upon her verbal request.

The Complainant also claims that the GRC's references to Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) are incorrect. The Complainant asserts that her OPRA request was not complex because it failed to specifically identify the documents sought.

Moreover, the Complainant states that months after her OPRA request the Police Department provided her with another police report that contained the full names of two (2) of the Platinum Fitness managers. The Complainant states that she obtained the name of the third manager from another source. As such, the Complainant claims that the Police Department must still provide her with the full name of the fourth manager due to extraordinary circumstances. Specifically, the Complainant alleges that the fourth manager harassed her in conjunction with his criminal accomplices, some of whom are Cedar Grove and Verona Police Department employees.

Also, the Complainant contends that foul play exists with regards to this OPRA request, as was discovered through the State of New Jersey's investigation into the matter.<sup>4</sup> However, the Complainant states that the GRC failed to address any such foul play in its August 24, 2010 decision.

### **September 30, 2010**

Letter from the GRC's Executive Director to Complainant. The Director states that the GRC is in receipt of the Complainant's Request for Reconsideration dated September 28, 2010. The Director states that the GRC's regulations at *N.J.A.C. 5:105-2.10* provide that a request for reconsideration must be "filed within ten (10) business days following receipt of a Council decision." The Director states that this complaint was decided at the Council's August 24, 2010 meeting and sent to all parties on August 30, 2010. The Director states that the Complainant indicated she received said decision on August 31, 2010. Thus, the Director states that the deadline to submit a request for reconsideration for this complaint expired after September 15, 2010.

Based on the foregoing, the Director states that the Complainant's request for reconsideration is denied because the Complainant failed to submit said request within the timeframe prescribed by *N.J.A.C. 5:105-2.10* and failed to provide any basis for the

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<sup>4</sup> The Complainant did not provide any further details regarding this investigation, such as the investigating agency or the subject of the investigation.

Complainant's inability to submit said request during the appropriate time period. However, the Director states that the Complainant may still appeal the Council's decision in the Appellate Division of the New Jersey Superior Court on or before October 15, 2010.

**October 5, 2010**

Letter from Custodian's Council to GRC. Counsel states that it has come to his attention that the Complainant requested reconsideration of her Denial of Access Complaint and that the Council denied said request pursuant to *N.J.A.C. 5:105-2.10*. Counsel submits that the Council's denial of the reconsideration request was proper pursuant to the GRC's regulations.

**October 12, 2010<sup>5</sup>**

Letter from Complainant to GRC. The Complainant states that she was unable to submit her request for reconsideration within the ten (10) business day timeframe as prescribed by *N.J.A.C. 5:105-2.10* due to health circumstances that required immediate medical attention during said time period.

**October 15, 2010**

Letter from Custodian's Counsel to GRC. Counsel states that the Complainant has once again requested reconsideration of her Denial of Access Complaint. Counsel states that the GRC has already denied the Complainant's first request pursuant to *N.J.A.C. 5:105-2.10*, which was proper. Counsel contends that there is no legal basis for reconsideration of this matter because the Council's August 24, 2010 decision was based upon all settled principles and case law.

**October 19, 2010**

Letter from GRC to Complainant. The GRC states that it received a letter from the Complainant dated October 12, 2010 wherein the Complainant provided her reasoning for failing to provide her request for reconsideration within the ten (10) business day timeframe as prescribed by *N.J.A.C. 5:105-2.10*. Specifically, the Complainant indicated that such failure was a result of health circumstances that required immediate medical attention during said time period.

The GRC states that at this time it will accept the Complainant's September 28, 2010 request for reconsideration on the basis that health circumstances prevented the Complainant from submitting said request within the required timeframe.

Additionally, the GRC provides the Custodian and/or Counsel five (5) business days to submit a response to the Complainant's request for reconsideration. The GRC states that said deadline is the close of business on October 26, 2010.

**October 21, 2010**

Custodian Counsel's response to the Complainant's request for reconsideration. Counsel contends that the Complainant's request for reconsideration is a restatement of

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<sup>5</sup> The Complainant's submission is dated October 6, 2010; however, the GRC received said submission on October 12, 2010.

the claim presented in her Denial of Access Complaint. Counsel asserts that in response to said claim, reliance was properly placed on 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) to conclude that the Complainant's OPRA request was invalid.

Specifically, Counsel states that the Complainant's OPRA request sought access to the first and last names of Platinum Fitness employees. Counsel states that the Custodian provided the Complainant access to the police reports that contained the full names of two (2) employees. Counsel asserts that to the extent that the requested names did not appear on any identifiable record, the Custodian was under no obligation to create a record in response to the Complainant's OPRA request.

Counsel contends that the Council's August 24, 2010 Final Decision should be affirmed upon reconsideration for the following reasons:

1. The Custodian provided the Complainant access to the records identified in her OPRA request;
2. The request for information pertaining to the police investigation is invalid because it failed to identify specific government records; and
3. The police reports provided to the Complainant contained the full names of two (2) Platinum Fitness employees and to the extent that the requested names did not appear on the records provided, the Custodian was under no obligation to create a record in response to the OPRA request.

Further, Counsel objects to any characterizations contained in the Complainant's request for reconsideration which suggest that there was "foul play" engaged in by the Township or any of its officials.

### **Analysis**

#### **Whether the Complainant has met the required standard for reconsideration of the Council's August 24, 2010 Final Decision?**

Pursuant to *N.J.A.C. 5:105-2.10*, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. *N.J.A.C. 5:105-2.10(a) – (e)*.

In this complaint, the Complainant failed to provide her request for reconsideration within the ten (10) business days as required by the GRC's regulations; however, the Complainant indicated that such failure was a result of health circumstances that required immediate medical attention. As such, the GRC accepted the

Complainant's request for reconsideration beyond the ten (10) business day deadline. *See, e.g., N.J.A.C. 5:105-2.10.*

The crux of the Complainant's argument in her request for reconsideration is that her OPRA request was as specific as possible considering Detective Kraus refused to provide her with any document names or numbers upon her verbal request. The Complainant contends that the Council's references to Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) are improper; the Complainant asserts that her OPRA request was not complex because it failed to specifically identify the documents sought.

Applicable case law holds that:

"[a] party should not seek reconsideration merely based upon dissatisfaction with a decision." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g., Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, supra, 242 N.J. Super. at 401. 'Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.' *Ibid.*" In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

The Council's decision dated August 24, 2010 was based upon multiple court cases and a prior GRC decision. Thus, the matter of what constitutes a valid OPRA request is well settled in case law. The Complainant's OPRA request failed to meet the standard of a valid request based upon settled case law. As such, the Council deemed the request invalid and overly broad. The Complainant failed to provide any convincing evidence to contradict the Council's decision.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above; namely 1) that the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. *See Cummings, supra*. The Complainant failed to submit any new evidence in support of her motion that would establish either of these criteria. The Complainant has also failed to show that the GRC



acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint. *See D'Atria, supra.*

Therefore, because the Complainant has failed to establish in her motion for reconsideration of the Council's August 24, 2010 Final Decision that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in her motion for reconsideration of the Council's August 24, 2010 Final Decision that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Dara Lownie  
Communications Manager/Information Specialist

Approved By: Catherine Starghill, Esq.  
Executive Director

December 14, 2010



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

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Commissioner*

**FINAL DECISION**

**August 24, 2010 Government Records Council Meeting**

Alyson Librizzi  
Complainant

Complaint No. 2009-213

v.

Township of Verona Police Department (Essex)  
Custodian of Record

At the August 24, 2010 public meeting, the Government Records Council (“Council”) considered the August 17, 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:

1. The Custodian’s Counsel provided the Complainant access to the records identified in her request (police reports and two (2) letters authored by the Complainant).
2. The Complainant’s request for all information pertaining to the police investigation is not a valid OPRA request because it fails to identify any specific government record pursuant to 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). This portion of the Complainant’s request is overly broad.
3. The police reports provided to the Complainant contained the full names of two (2) Platinum Fitness employees and to the extent that the requested names do not appear on the records already provided to the Complainant, the Custodian was under no obligation to create a record in response to the Complainant’s OPRA request.

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 August, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Stacy Spera, Secretary  
Government Records Council

**Decision Distribution Date: August 30, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 24, 2010 Council Meeting**

**Alyson Librizzi<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-213**

v.

**Township of Verona Police Department (Essex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** “All of the information from the Verona Police Department Detective Bureau’s investigation of CC # 8007534 of continuation and two additional items (2 letters of the victim’s): one dated June 2, 2008 and the other dated July 28, 2008. All information...must include the first and last names of the Platinum Fitness employees questioned or in questioning and the last names of employees and/or managers: Phil, Dan and Justin, regardless of what their employee titles/status were during the period of March 2008 to July 2008 and/or June and July 2008.”

**Request Made:** June 1, 2009

**Response Made:** June 12, 2009 and June 15, 2009

**Custodian:** Chief Douglas Huber

**GRC Complaint Filed:** July 9, 2009<sup>3</sup>

**Background**

**June 1, 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 12, 2009**

Custodian Counsel’s response to the OPRA request. Counsel responds in writing to the Complainant’s OPRA request on the fifth (5<sup>th</sup>) business day following the Custodian’s receipt of such request.<sup>4</sup> Counsel states that he is reviewing the Complainant’s OPRA request and will advise the Complainant promptly if the requested records can be provided.

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

<sup>2</sup> Represented by Paul J. Giblin, Sr., Esq., of Giblin & Giblin (Oradell, NJ).

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

<sup>4</sup> The Custodian certifies in his Statement of Information dated October 13, 2009 that he received the Complainant’s OPRA request on June 5, 2009.

**June 15, 2009**

Custodian Counsel's subsequent response to the OPRA request. Counsel responds in writing to the Complainant's OPRA request on the sixth (6<sup>th</sup>) business day following the Custodian's receipt of such request. Counsel states that the following enclosed records are responsive to the Complainant's OPRA request:

- Copy of Complainant's driver's license
- Letter from Complainant to Charles Hebeke dated June 2, 2008
- Letter from Complainant to Charles Hebeke dated July 28, 2008
- Police incident report dated July 29, 2008
- Police continuation report dated August 18, 2008

**July 9, 2009**

Denial of Access Complaint filed with the Government Records Council ("GRC") with the Complainant's OPRA request dated June 1, 2009 attached. The Complainant states that she hand-delivered her OPRA request to the Clerk's Office on June 1, 2009. The Complainant states that she received a voicemail message on June 2, 2009 from Joseph Martin who indicated that he received the Complainant's OPRA request and would forward said request to the Township Attorney.

The Complainant states that she telephoned the Clerk's Office on June 9, 2009 to check the status of her OPRA request and the Clerk informed her that she would contact the Township Attorney for an update. The Complainant states that she received a call from the Township Manager about fifteen (15) minutes later on the same date, in which the Township Manager advised that he had not yet forwarded the Complainant's OPRA request to the Township Attorney because he did not understand the Complainant's OPRA request. The Complainant states that the Township Manager ultimately indicated that he would forward the Complainant's OPRA request to the Township Attorney if the Complainant desired.<sup>5</sup>

The Complainant states that in response to her OPRA request, the Township Attorney provided her with records that she already had in her possession: the July 28, 2008 police incident report<sup>6</sup>, a photocopy of her driver's license, and two (2) letters that she wrote to the owner of Platinum Fitness. The Complainant states that she contacted the Custodian's Counsel to inform that the records provided were not what the Complainant requested. The Complainant states that the Attorney contacted the Custodian and sent another letter to the Complainant dated June 23, 2009 in which the Attorney stated that there were no other records responsive to the Complainant's OPRA request.

Additionally, the Complainant states that she has not yet made a decision regarding her participation in mediation.

**August 20, 2009**

Offer of Mediation sent to Custodian.

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<sup>5</sup> The Complainant makes additional statements that are not relevant to the adjudication of this Denial of Access Complaint.

<sup>6</sup> The police report is dated July 29, 2008.

**August 31, 2009**

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

**September 4, 2009**

Letter of Representation from Custodian’s Counsel. Counsel signs the Agreement to Mediate form.

**September 21, 2009**

Offer of Mediation sent to Complainant.<sup>7</sup>

**September 29, 2009**

Request for the SOI re-sent to the Custodian.

**October 5, 2009**

E-mail from Custodian’s Counsel to GRC. Counsel requests a five (5) business day extension of time to submit the Custodian’s completed SOI.

**October 5, 2009**

E-mail from GRC to Custodian’s Counsel. The GRC grants a five (5) business day extension of time for the Custodian to submit a completed SOI.

**October 13, 2009<sup>8</sup>**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated June 1, 2009
- Custodian Counsel’s response to the OPRA request dated June 12, 2009
- Custodian Counsel’s subsequent response to the OPRA request dated June 15, 2009 with attachments

The Custodian certifies that he received the Complainant’s OPRA request on or about June 5, 2009. The Custodian states that Counsel provided the Complainant with a written response to said request on June 12, 2009 and June 15, 2009. The Custodian certifies that the records responsive to the Complainant’s OPRA request are a police incident report no. 80 dated July 28, 2008 and a police report with handwritten corrections/notations to the report dated July 28, 2008.<sup>9</sup>

The Custodian asserts that the Complainant’s OPRA request is a request for information and not a request for a specific identifiable government record. As such, the Custodian contends that said request is not encompassed by OPRA and he has not unlawfully denied access to said request 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.

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<sup>7</sup> The Complainant did not respond to the Offer of Mediation.

<sup>8</sup> Additional correspondence was submitted by the parties. However, said correspondence is not relevant to the adjudication of this complaint.

<sup>9</sup> Said reports are dated July 29, 2008.

Div. 2007) and Schuler v. Borough of Bloomsbury (Hunterdon), GRC Complaint No. 2007-151 (February 2009).

Additionally, the Custodian certifies that the Police Department requested that the records bureau provide any and all records responsive to the request to the Complainant. The Custodian also certifies that in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management, the Police Department does not destroy records.

### **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.

The Complainant states that she hand-delivered her OPRA request to the Clerk’s Office on June 1, 2009. The Custodian in the Police Department certified that he received the Complainant’s OPRA request on June 5, 2009. The Custodian stated in his Statement of Information that Counsel provided the Complainant with a written response to her request dated June 15, 2010, the sixth (6<sup>th</sup>) business day following the Custodian’s receipt of said request, wherein Counsel disclosed the records responsive to the Complainant.

The Complainant stated that Counsel provided her with records that she already maintained. The Complainant stated that she contacted the Custodian's Counsel to inform that the records provided were not what the Complainant requested. The Complainant stated that Counsel contacted the Custodian and sent another letter to the Complainant dated June 23, 2009 in which Counsel stated that there were no other records responsive to the Complainant's OPRA request.

In the Complainant's OPRA request, the Complainant specifically sought access to the following:

“all of the information from the Verona Police Department Detective Bureau's investigation of CC # 8007534 of continuation and two additional items (2 letters of the victim's): one dated June 2, 2008 and the other dated July 28, 2008. All information...must include the first and last names of the Platinum Fitness employees questioned or in questioning and the last names of employees and/or managers: Phil, Dan and Justin, regardless of what their employee titles/status were during the period of March 2008 to July 2008 and/or June and July 2008.”

Buried in the middle of the Complainant's request, the Complainant identifies police reports and two (2) letters that she authored. The Custodian's Counsel provided the Complainant with said records. However, the remainder of the Complainant's request specifically seeks information such as names of Platinum Fitness employees, and all information related to the police investigation.

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),<sup>10</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>11</sup>

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<sup>10</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>11</sup> As stated in Bent, *supra*.



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)."

Based on the above legal authorities, the Complainant's request for all information pertaining to the police investigation is not a valid OPRA request because it fails to identify any specific government record pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*. This portion of the Complainant's request is overly broad.

Additionally, the Custodian's Counsel provided the Complainant access to the records the Complainant did identify in her request (police reports and two (2) letters authored by the Complainant), even though the Complainant later stated that she already maintained said records and that said records were not what she sought in her OPRA request.

Further, the Complainant's OPRA request specifically sought the first and last names of the Platinum Fitness employees questioned during the police investigation. OPRA does allow for the disclosure of an individual's name, title and position pursuant to N.J.S.A. 47:1A-10; however, said provision relates to personnel or pension records maintained by a public agency. In this matter, the requested names do not appear on personnel or pension records, but on a police report. Moreover, the full names of two (2) Platinum Fitness employees are contained on a police report which the Custodian's Counsel provided to the Complainant. To the extent that the requested names do not appear on the records already provided to the Complainant, the Custodian was under no obligation to create a record in response to the Complainant's OPRA request that identifies the names of persons questioned during the police investigation.

Therefore, the Custodian has not unlawfully denied access to the Complainant's OPRA request for the following reasons:

1. The Custodian's Counsel provided the Complainant access to the records identified in her request (police reports and two (2) letters authored by the Complainant).
2. The Complainant's request for all information pertaining to the police investigation is not a valid OPRA request because it fails to identify any specific government record pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*. This portion of the Complainant's request is overly broad.

3. The police reports provided to the Complainant contained the full names of two (2) Platinum Fitness employees and to the extent that the requested names do not appear on the records already provided to the Complainant, the Custodian was under no obligation to create a record in response to the Complainant's OPRA request.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has not unlawfully denied access to the Complainant's OPRA request for the following reasons:

1. The Custodian's Counsel provided the Complainant access to the records identified in her request (police reports and two (2) letters authored by the Complainant).
2. The Complainant's request for all information pertaining to the police investigation is not a valid OPRA request because it fails to identify any specific government record pursuant to 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). This portion of the Complainant's request is overly broad.
3. The police reports provided to the Complainant contained the full names of two (2) Platinum Fitness employees and to the extent that the requested names do not appear on the records already provided to the Complainant, the Custodian was under no obligation to create a record in response to the Complainant's OPRA request.

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Executive Director

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