



**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**

**June 29, 2010 Government Records Council Meeting**

Salvatore LaRosa  
Complainant

Complaint No. 2009-220

v.

Plainfield Municipal Utilities Authority (Union)  
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:

1. Although the Custodian provided a written response to the Complainant’s amended request within the statutorily mandated seven (7) business days, said response is insufficient pursuant to OPRA because it does not grant access, deny access, seek clarification, or request an extension of time. Thus, the request for the sewer fee formula is “deemed” denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Bart v. City of Paterson Housing Authority, GRC Complaint No 2005-145 (May 2007).
2. The Complainant’s request for the formula used to determine the 2009 per unit Sewer Fee fails to specify an identifiable government record. Therefore, such request is 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, 180 (App. Div. 2007) and 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 29<sup>th</sup> 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**

**Salvatore LaRosa<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-220**

v.

**Plainfield Municipal Utilities Authority (Union)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Formula used to determine the 2009 per unit sewer fee.<sup>3</sup>

**Request Made:** May 5, 2009<sup>3</sup>

**Response Made:** May 11, 2009

**Custodian:** Dollie Hamlin

**GRC Complaint Filed:** July 16, 2009

**Background**

**May 5, 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.

**May 11, 2009**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request. The Custodian states that she will contact the Complainant by the end of the week with information regarding the formula to determine sewer fees.

**June 16, 2009**

E-mail from the Complainant to the Custodian. The Complainant states that more than a month has passed since the Custodian's May 11, 2009 letter. The Complainant states that he still does not have the formula to determine sewer fees. The Complainant asserts that this information should be readily available to the public and wants to know the reason for the delay.

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

<sup>2</sup> Represented by Michael V. Camerino, Esq., of Mauro, Savo, Camerino & Grant (Somerville, NJ).

<sup>3</sup> The Complainant requested additional records which are not at issue in this complaint.

<sup>3</sup> The Complainant alleged in the Denial of Access Complaint that he filed the instant OPRA request on May 7, 2009. However, the OPRA request form is dated May 5, 2009.

## **July 16, 2009**

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

- Complainant’s OPRA request dated May 5, 2009
- Letter from the Custodian to the Complainant dated May 11, 2009
- E-mail from the Complainant to the Custodian dated June 16, 2009

The Complainant states that in February 2009 he contacted the Plainfield Municipal Utilities Authority’s (PMUA) Chief Financial Officer to obtain an explanation why his sewer fees were so excessive. The Complainant asserts that after several failed attempts to receive an answer, he filed an OPRA request for, among other records, the formula used to determine the sewer rate. The Complainant further asserts that he received a letter from the Custodian indicating that she would contact the Complainant with the formula by the end of the week.

The Complainant states that the Custodian never sent him the sewer formula. The Complainant also states that on June 16, 2009 he sent a follow-up e-mail to the Custodian inquiring why the Complainant had not yet received the requested information. The Complainant also asserts that the Custodian never responded to this e-mail. The Complainant states that on June 21, 2009, the Complainant attended a public PMUA meeting and asked again for the sewer formula; the Complainant contends that the Chief Executive Officer (CEO) stated that he will provide the Complainant with a written explanation.

Finally, the Complainant certifies that as of July 16, 2009 he still does not have any information or explanation regarding the formula, despite written and verbal promises from the Custodian and CEO.

The Complainant does not agree to mediate this complaint.

## **August 19, 2009<sup>4</sup>**

Custodian’s Statement of Information (SOI) with the following attachments:

- Complainant’s OPRA request dated May 5, 2009
- Letter from the Custodian to the Complainant dated May 11, 2009

Custodian’s Counsel asserts that the Complainant’s request sought information rather than a specific government record. Custodian’s Counsel further asserts that as such, said request is invalid under OPRA. Custodian’s Counsel states that the GRC has previously determined that similar requests are invalid under OPRA. See Reda v. Township of West Milford, GRC Complaint No. 2002-58.

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<sup>4</sup> The evidence of record is unclear when the request for the Statement of Information was sent to the Custodian.

Custodian's Counsel states that the Custodian attempted to obtain the requested information for the Complainant; nevertheless, the Complainant failed to identify a specific government record sought, and thus the request was lawfully denied.

### 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 request sought the formula used to determine the 2009 per unit sewer fee. Although the Custodian responded in writing to the Complainant on the fifth (5<sup>th</sup>) business day following receipt of such request stating that she would contact the Complainant with the requested information by the end of the week, the Custodian failed to do so.

In Bart v. City of Paterson Housing Authority, GRC Complaint No 2005-145 (May 2007), the Custodian provided a written response to the Complainant's request; however, said response did not explicitly grant or deny access to the requested record. The Council held that:

“[a]lthough the Custodian responded in writing within the statutory time period under OPRA the Custodian’s response to the request for the sign that references the PHA’s desire for Spanish-speaking tenants to bring their own interpreter was so vague that it could not be determined if the requested sign did not exist or if the request was being denied. Therefore, even though the sign was eventually released to the Complainant, the request is deemed denied and the Custodian has violated N.J.S.A. 47:1A-5.i.”

In the instant complaint, the Custodian responded to the Complainant stating that he received the OPRA Request regarding the sewer fee formula. However, the Custodian failed to definitively grant access, deny access, seek clarification or request an extension of time to respond within seven (7) business days after receipt of the Complainant’s amended OPRA request.

Therefore, although the Custodian provided a written response to the Complainant’s amended request within the statutorily mandated seven (7) business days, said response is insufficient pursuant to OPRA because it does not grant access, deny access, seek clarification, or request an extension of time. Thus, the request for the sewer fee formula is “deemed” denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Bart, supra.

Nevertheless, the Complainant’s request fails to specify an identifiable government record and is therefore invalid under OPRA. 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>5</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>6</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

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

<sup>6</sup> As stated in Bent, supra.

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)."

The Complainant's request for the formula used to determine the 2009 per unit sewer fee fails to specify an identifiable government record but instead seeks information. Therefore, such request is 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 Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian provided a written response to the Complainant's amended request within the statutorily mandated seven (7) business days, said response is insufficient pursuant to OPRA because it does not grant access, deny access, seek clarification, or request an extension of time. Thus, the request for the sewer fee formula is "deemed" denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Bart v. City of Paterson Housing Authority, GRC Complaint No 2005-145 (May 2007).
2. The Complainant's request for the formula used to determine the 2009 per unit Sewer Fee fails to specify an identifiable government record. Therefore, such request is 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, 180 (App. Div. 2007) and 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