



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

February 28, 2012 Government Records Council Meeting

Michael Pushko
Complainant

Complaint No. 2009-269

v.

New Jersey Department of Community Affairs,
Division of Housing and Community Resources
Custodian of Record

At the February 28, 2012 public meeting, the Government Records Council (“Council”) considered the February 21, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant’s request is invalid under OPRA because it fails to specify identifiable government records sought and requires research outside of those responsibilities prescribed for Custodians by 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, 180 (App. Div. 2007). *See also* 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 28th Day of February, 2012

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Denise Parkinson Vetti, Esq., Secretary
Government Records Council

Decision Distribution Date: March 5, 2012

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Michael Pushko¹
Complainant**

GRC Complaint No. 2009-269

v.

**New Jersey Department of Community Affairs,
Division of Housing and Community Resources²
Custodian of Records**

Records Relevant to Complaint:

The names and addresses of people in Ocean County over the age of 55 who receive tenant based rental assistance (Section 8, State Rental Assistance Program, etc.) from the Department of Community Affairs.

Request Made: September 8, 2009³

Response Made: September 21, 2009

Custodian: Robert N. Wright, Jr.⁴

GRC Complaint Filed: September 25, 2009⁵

Background

September 8, 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.

September 21, 2009

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request.⁶ The Custodian states that access to the requested record is denied pursuant to Executive Order No. 26 (McGreevey, 2002) which states that information that indicates a natural person's income or assets is not a public record under

¹ No legal representation listed on record.

² Represented by DAG Jonathan J. Greenberg, on behalf of the NJ Attorney General.

³ Received by the Custodian on September 14, 2009.

⁴ Mr. Wright was the Custodian during the pendency of this matter. The current Custodian is Roseanne Rizza.

⁵ The GRC received the Denial of Access Complaint on September 29, 2009.

⁶ The Custodian certified in the Statement of Information that he received the Complainant's OPRA request on September 14, 2009.

OPRA. As such, the Custodian states that any report that the system generates would require him to redact the requested information.

September 21, 2009

E-mail from the Complainant to the Custodian. The Complainant states that he believes that the Custodian's reading of Executive Order 26 is overly broad. The Complainant states that as a compromise, he would settle for just the addresses, not the names, of the individuals requested. The Complainant asserts that, there can be no violation of Executive Order 26(b)(3) if he is not provided the names nor the amount of money the individuals receive.

The Complainant states that he requested the subject information because he owns several condominiums in a 55+ community in Lakewood. The Complainant further states that he would like to offer these units as they become available to people who receive rental assistance. The Complainant maintains that while he does advertise in the local paper, it seems as though the advertisements do not reach those individuals on assistance. The Complainant explains that he listed the properties with the Lakewood Housing Authority and the Ocean County Board of Social Services but that these listings get very little attention. The Complainant states that a direct mailing would work best.

The Complainant asserts that providing only the address would allow him to accomplish his goal and not provide any "natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness."

September 23, 2009

E-mail from the Custodian to the Complainant. The Custodian asks the Complainant whether he has looked into the Housing Resource Center as it is a forum to market and find affordable housing. The Custodian informs the Complainant that this would be a good place for him to list his housing units. The Custodian states that they will forward the Complainant's e-mails to the Division of Housing staff.

The Custodian informs the Complainant that it is the Division of Housing's policy to redact both the addresses and names of recipients of tenant based rental assistance. The Custodian states that it is relatively easy to identify an individual with the address and thereby place them at risk of having their financial status disclosed, unwanted solicitation or other harm. The Custodian asks the Complainant if the Complainant would like the Custodian to generate the redacted report.

September 25, 2009

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

- Complainant's OPRA request dated September 8, 2009
- E-mail from the Complainant to the Custodian dated September 21, 2009⁷
- E-mail from the Complainant to the Custodian dated September 21, 2009
- E-mail from the Custodian to the Complainant dated September 23, 2009

⁷ This e-mail is the Custodian's response to the Complainant's OPRA request.

The Complainant states that the Division of Housing and Community Resources information management system, known as “HAPPY,” contains the information that the Complainant seeks and can provide such for the Complainant with redactions. The Complainant states that the Custodian asserted that the names and addresses of the individuals in that report would have to be redacted pursuant to Executive Order No. 26 (McGreevey, 2002). The Complainant also states that the Custodian asserts that Executive Order No. 26 states that information that indicates a natural person’s income or assets is not a public record under OPRA. The Complainant further states that the Custodian states that it remains the agency’s policy to redact both the addresses and names of recipients of tenant-based rental assistance to avoid disclosing their financial status and/or the risk of unwanted solicitation or other harm.

The Complainant agrees to mediate this complaint.

October 5, 2009

Offer of Mediation sent to the Custodian.

October 5, 2009

The Custodian agrees to mediate this Complaint.

October 6, 2009

The Complaint is referred to mediation.

January 22, 2010

The Denial of Access Complaint is referred back to the GRC from mediation.

February 22, 2010

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

February 26, 2010

The Custodian requests an extension to complete and submit the SOI because he is requesting representation from the Attorney General’s Office.

March 1, 2010

The GRC grants the Custodian a five (5) business day extension to submit the SOI.

March 8, 2010

Custodian’s SOI.⁸ The Custodian certifies that requests for names and contact information relative to individuals applying for or receiving housing assistance from the Division of Housing and Community Resources have been made on prior occasions. Accordingly, the Custodian states that he is aware that this information is maintained by the Housing Assistance Unit in the HAPPY information management system and that such a report with the requested information could be generated. The Custodian asserts

⁸ The Custodian included no attachments to the SOI.
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Findings and Recommendations of the Executive Director

that he consulted with Deborah Heinz, the Deputy Division Director, and verified that the requested information is private.

The Custodian states that there are two (2) programs administered by the Department of Community Affairs (“DCA”) that conform to the Complainant’s request, the Federal Section 8 Housing Assistance Program (“Section 8”) and New Jersey’s State Rental Assistance Program (“SRAP”). The Custodian states that both programs restrict eligibility to low income or very low income individuals and households pursuant to 24 C.F.R. 982.201(b)(1) (Section 8 Program income eligibility); N.J.A.C. 5:42-1.1(a) (SRAP income eligibility).

The Custodian asserts that the Complainant is requesting that the Custodian disclose the identity of individuals and families who are necessarily of low, very low, or extremely low income. The Custodian argues that Executive Order 26, 4(b)(3) (McGreevey, 2002) provides that records containing information “describing a natural person’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness” shall not be considered to be government records subject to public access. The Custodian further cites to N.J.S.A. 47:1A-1 (government records may be exempted from public access pursuant to an Executive Order of the Governor). Additionally, the Custodian argues that because the disclosure of the identity of the individuals responsive to the Complainant’s request is necessarily inseparable from a disclosure of a description of those individuals’ income, or at least a defined range of income, the records sought by the Complainant are not subject to public access.

The Custodian further asserts that the information sought by the Complainant is also not subject to disclosure under OPRA because the DCA has a “responsibility and obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.” N.J.S.A. 47:1A-1; Burnett v. City of Bergen, 198 N.J. 408 (2009). The Custodian cites to Doe v. Poritz for the proposition that our Supreme Court recognized that the “public disclosure of [an individual’s] home address does implicate privacy interests.” 142 N.J. 1, 83-84 (1995).

In addition, the Custodian argues that the United States Supreme Court, in the context of interpreting exemption 6 to the Federal Freedom of Information Act (“FOIA”), has held that an individual has a “not insubstantial interest” in the non-disclosure of his or her home address. U.S. Dep’t of Defense v. Fed. Labor Relations Auth., U.S., 487, 500 (1994) (adding at 501 that the Court is “reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions”). In further support of his argument, the custodian mentions that even prior to U.S. Dep’t of Defense, several circuit courts of appeals held that an individual has a “significant” “privacy interest” in “avoiding the unlimited disclosure of his or her name and address.” See Nat’l Ass’n of Ret. Fed. Employees v. Horner, 879 F.2d 873, 875 (D.C. Cir. 1989) (adding at 876 that unlimited disclosure not only interferes with an individual’s “control of information concerning his or her person,” but also with the more general “reasonable expectation in the solitude and seclusion of [his or her] own home”); See also Fed. Labor Relations Auth. v. U.S. Dep’t of the Navy, 966 F.2d 747, 756 (3rd Cir. 1992) (there is a

“meaningful interest in the privacy of information concerning [one’s] home[.]” (quoting citation omitted.).

The Custodian states that the Executive Branch of this State has also recognized that the release of home addresses implicates significant privacy interests. The Custodian draws attention to Executive Order 21, Section 3 (McGreevey, 2002); Governor McGreevey, at the same time, ordered the creation of Privacy Study Commission to “study the issue of whether and to what extent the home address and home telephone number of citizens should be made publicly available by public agencies” and to report its findings and recommendations to the Governor and the Legislature. The Custodian notes that when the Privacy Study Commission released its report in December 2004, the Commission reaffirmed the privacy interest in one’s home address and noted that the Legislature, in enacting OPRA, did not intend to “forc[e] individuals to sacrifice their privacy [in their personally identifiable information such as home addresses] as a condition of doing business with the government.” Privacy Study Commission, Report on Home Addresses and Telephone Number (Dec. 20, 2004). Additionally, the Custodian asserts that among the Commission’s six (6) recommendations to the Governor and the Legislature, four (4) relate to “providing additional protections surrounding the disclosure of home addresses.” *Ibid.*; Bernstein v. Borough of Woodcliff Lake, GRC Complaint No. 2005-02 (July 2005).

The Custodian argues that the disclosure of an individual’s home address by itself implicates a person’s reasonable expectation of privacy and the privacy interest becomes even more significant when an individual’s home address and name is disclosed within a context of other facts and circumstances implicating privacy interests, such as in Aronson v. Dep’t of Housing and Urban Devel., 822 F.2d 1982 (1st Cir. 1987), where a FOIA requester sought a list of names and home addresses of individuals who owed a “substantial sum of money” upon the termination of their HUD mortgage insurance policies.

The Custodian argues that an individual’s interest in the non-disclosure of his or her name and home address also becomes more significant when such disclosure is reasonably likely to result in “unsolicited contact” or some other non *de minimus* harm. Doe v. Poritz, *supra*, 142 N.J. at 83; See also Bernstein v. Borough of Woodcliff Lake, *supra* (disclosure of list of name and addresses of dog license owners “could adversely affect the privacy of citizens with unwarranted solicitation and the redistribution or sale of the names and addresses”); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004) (redaction of names and addresses of persons receiving moving violations issued by a particular police office was proper because of the likelihood that disclosure “will result in unsolicited contact”); Horner, *supra*, 879 F.2d at 876 (disclosure of names and addresses would result in an “unwanted barrage of mailings and personal solicitations”) (quoting citation omitted).

The Custodian asserts that the Complainant’s request for the names and addresses is motivated by his desire to rent several condominiums in a 55+ community in Lakewood to individuals receiving rental assistance. The Custodian states that the very purpose of the Complainant’s request is to obtain information to enable him to engage in targeted unsolicited contact. Accordingly, the Custodian maintains that this type of

request implicates the privacy interests recognized by the Legislature, New Jersey State Courts, Federal courts, New Jersey Governors, the Privacy Study Commission and the GRC.

In addition, the Custodian states that the Complainant has not offered a public interest in the disclosure of names and addresses requested sufficient to outweigh the Section 8 Program and SRAP participants' reasonable expectation of privacy. The Custodian cites to Doe v. Poritz for the proposition that when "legitimate privacy interests exist that require a balancing of interests and consideration of the need for access, it is appropriate to ask whether unredacted disclosure will further the core purposes of OPRA: 'to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" *Id.* at 435 (quoting citation omitted). The Custodian asserts that it is clear that the Complainant's interest is personal in nature and is not intended to advance the core purposes of OPRA. The Custodian closes his argument by quoting Horner: "something, even a modest privacy interest, outweighs nothing [*i.e.*, no public interest] every time." *Id.* at 879.

August 30, 2010

GRC requests that the Custodian and Complainant complete balancing test questionnaires to assist with the proper adjudication of this complaint.

September 15, 2010

Custodian's response to the GRC's request for a balancing test.⁹

Factors for Consideration in Balancing Test	Custodian's Responses
1. The type of records requested.	<p>Names and contact information relative to individuals applying for or receiving housing assistance from the Division of Housing and Community Resources.</p> <p>This information is maintained by the Housing Assistance Unit in the HAPPY system. HAPPY has the capability to generate a report with the specified parameters.</p>
2. The information the requested records do or might contain.	<p>The Complainant, Michael Pushko, has requested the names and home addresses of individuals over the age of 55 living in Ocean County, New Jersey who receive "tenant-based" rental assistance through the Department of Community Affairs ("DCA"). There are two programs administered by the DCA conforming to this request: the Federal Section 8 Housing Assistance Program ("Section 8 Program") and New Jersey's State Rental Assistance Program ("SRAP"). Both programs restrict eligibility to low income or very low income individuals and households. See 24 C.F.R. § 982.201(b)(1) (Section 8 Program income eligibility); <i>N.J.A.C.</i> 5:42-1.1(a)</p>

⁹ The Complainant did not return his responses to the balancing test for the GRC's consideration. Michael Pushko v. New Jersey Department of Community Affairs, Div. of Housing and Community Resources, 2009-269 -- Findings and Recommendations of the Executive Director

<p>3. The potential harm in any subsequent non-consensual disclosure of the requested records.</p>	<p>(SRAP income eligibility). These records would contain the identity of individuals and families who are necessarily of low, very low, or extremely low income as defined above. Disclosure of records containing information “describing a natural person’s finances, <u>income</u>, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness” shall not be considered to be government records subject to public access. Exec. Order 26, ¶ 4(b)(3) (McGreevey, Aug. 13, 2002) (Emphasis added). <u>N.J.S.A. 47:1A-1</u> (government records may be exempted from public access pursuant to an Executive Order of the Governor). Because the disclosure of the identity of the individuals responsive to the Complainant’s request is necessarily inseparable from a disclosure of a description of those individuals’ income - or at least a defined range of income, the records sought by the Complainant are not subject to public access.</p> <p>While the disclosure of an individual’s home address by itself implicates a person’s reasonable expectation of privacy, the privacy interest becomes even more significant when an individual’s home address and name is disclosed within a context of other facts and circumstances implicating privacy interests, such as in <u>Aronson v. Dep’t of Housing and Urban Devel.</u>, 822 F.2d 182 (1st Cir. 1987), where a FOIA requester sought a list of names and home addresses of individuals who owed a “substantial sum of money” upon the termination of their HUD mortgage insurance policies. As noted by Court of Appeals for the District of Columbia in <u>Horner</u>, <i>supra</i>:</p> <p>[t]he extent of any invasion of privacy that release of [a list of names and addresses] might occasion . . . depends upon the nature of defining characteristics, <i>i.e.</i>, whether it is significant that an individual possesses them. 879 F.2d at 876. <u>Accord Doe v. Poritz</u>, <i>supra</i>, 142 N.J. at 83.</p> <p>With respect to the Complainant’s request, the disclosure of a list of individuals comporting with the Complainant’s criteria necessarily reveals that those individuals are of low, very low, or extremely low income and that they are the beneficiaries of a welfare-type housing assistance program. Considering the stigma commonly associated with poverty and welfare assistance, it is not unreasonable to assume that disclosure may result in considerable embarrassment and/or shame. Because of these privacy interests, the personal information that participants in the Section 8 Program or in SRAP provide to the DCA should generally be considered confidential and</p>
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	<p>not subject to public disclosure without their consent. <i>To wit</i>, the confidentiality of such personal information is consistent with the DCA’s Housing Choice Voucher Administrative Plan for the Section 8 Program, which provides that:</p> <p style="padding-left: 40px;">[e]very employee of the Housing Assistance Program must sign a Statement of Confidentiality. This statement speaks to the sensitivity of the information maintained in client files and the need to protect the privacy of client information through security features.</p> <p>Division of Housing, <u>Housing Choice Voucher Program Administrative Plan</u>, Appendix C, 8 (July 2008).</p> <p>Nor, finally, does the Complainant offer a public interest in the disclosure of names and addresses requested to balance against the Section 8 Program and SRAP participants’ reasonable expectation of privacy. <u>Burnett, supra</u>, 198 <u>N.J.</u> at 427 (adopting the seven factors identified in <u>Doe v. Poritz, supra</u>, to balance the interests in privacy and access). When “legitimate privacy interests exist that require a balancing of interests and consideration of the need for access, it is appropriate to ask whether unredacted disclosure will further the core purposes of OPRA: ‘to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.’” <i>Id.</i> at 435 (quoting citation omitted). With respect to the Complainant’s request, it is clear that his interest is personal in nature and is not intended to advance the core purposes of OPRA. As has been held in the context of FOIA, “something, even a modest privacy interest, outweighs nothing [<i>i.e.</i>, no public interest] every time.” <u>Horner, supra</u>, 879 <u>F.2d</u> at 879; <i>accord U.S. Dep’t of Defense, supra</i>, 510 <u>U.S.</u> at 500 (a “very slight privacy interest” will outweigh a “virtually nonexistent FOIA-related public interest in disclosure”).</p>
<p>4. The injury from disclosure to the relationship in which the requested record was generated.</p>	<p>Permitting the disclosure of low income seniors’ names and /or addresses could expose this population to being targeted for unwanted or nefarious solicitation. While the Complainant’s intention may not be nefarious in nature, the risk must still be considered in the Custodian’s objective analysis of protecting a citizen’s private information.</p> <p>An individual’s interest in the non-disclosure of his or her name and home address also becomes more significant when such disclosure is reasonably likely to result in “unsolicited contact” or some other non <i>de minimus</i> harm. <u>Doe v. Poritz, supra</u>, 142 <u>N.J.</u> at 83; <i>see also</i> <u>Bernstein v. Borough of</u></p>

	<p><u>Woodcliff Lake</u>, <i>supra</i> (disclosure of list of name and addresses of dog license owners “could adversely affect the privacy of citizens with unwarranted solicitation and the redistribution or sale of the names and addresses”); <u>Merino v. Borough of Ho-Ho-Kus</u>, GRC Complaint No. 2003-110 (July 2004) (redaction of names and addresses of persons receiving moving violations issued by a particular police office was proper because of the likelihood that disclosure “will result in unsolicited contact”); <u>Horner</u>, <i>supra</i>, 879 F.2d at 876 (disclosure of names and addresses would result in an “unwanted barrage of mailings and personal solicitations”) (quoting citation omitted).</p> <p>As indicated in Complainant’s September 21, 2009 e-mail to the Custodian in this case, the Complainant’s request for the list of names and addresses is motivated by his desire to rent several condominiums in a 55+ community in Lakewood to individuals receiving rental assistance. In short, the very purpose of the Complainant’s request is to obtain information to enable him to engage in targeted unsolicited contact. This type of request thereby squarely implicates the privacy interests recognized by the Legislature, our state courts, federal courts, our Governors, the Privacy Study Commission and the GRC.</p>
5. The adequacy of safeguards to prevent unauthorized disclosure.	None.
6. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access.	<p>The information sought by the Complainant is also exempt from disclosure under OPRA because the DCA has a “responsibility and obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.” <u>N.J.S.A.</u> 47:1A-1; <u>Burnett v. Cty. of Bergen</u>, 198 <u>N.J.</u> 408 (2009). In <u>Doe v. Poritz</u>, our Supreme Court recognized that the “public disclosure of [an individual’s] home address does implicate privacy interests.”¹⁰ 142 <u>N.J.</u> 1, 83-84 (1995)]. Analogously, the United States Supreme Court, in the context of interpreting Exemption 6 to the federal Freedom of Information Act (“FOIA”), has held that an individual has a “not insubstantial interest” in the non-disclosure of his or her home address. <u>U.S. Dep’t of Defense v. Fed. Labor Relations Auth.</u>, 510 <u>U.S.</u>, 487, 500 (1994) (adding at 501 that the Court is “reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and</p>

traditions”). Moreover, even prior to U.S. Dep’t of Defense, several circuit courts of appeals held that an individual has a “significant” “privacy interest” in “avoiding the unlimited disclosure of his or her name and address.” *See Nat’l Ass’n of Ret. Fed. Employees v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989) (adding at 876 that unlimited disclosure not only interferes with an individual’s “control of information concerning his or her person,” but also with the more general “reasonable expectation in the solitude and seclusion of [his or her] own home”); *see also Fed. Labor Relations Auth. v. U.S. Dep’t of the Navy*, 966 F.2d 747, 756 (3rd Cir. 1992) (there is a “meaningful interest in the privacy of information concerning [one’s] home[.]”) (quoting citation omitted).

The Executive Branch of this State has also recognized that the release of home addresses implicates significant privacy interests. For example, in Exec. Order 21, ¶ 3 (McGreevey, 2002), Governor McGreevey ordered that “an individual’s home address and home telephone number, as well as his or her social security number, shall not be disclosed by a public agency” unless to someone duly authorized, or unless permitted by a person in interest. Although ¶ 3 of Exec. Order 21 was rescinded by Exec. Order 26 (McGreevey, 2002), Governor McGreevey, at the same time, ordered the creation of Privacy Study Commission to “study the issue of whether and to what extent the home address and home telephone number of citizens should be made publicly available by public agencies” and to report its findings and recommendations to the Governor and the Legislature. When the Privacy Study Commission released its report in December 2004, the Commission reaffirmed the privacy interest in one’s home address and noted that the Legislature, in enacting OPRA, did not intend to “forc[e] individuals to sacrifice their privacy [in their personally identifiable information such as home addresses] as a condition of doing business with the government.” Privacy Study Commission, Report on Home Addresses and Telephone Number (Dec. 20, 2004). In addition, among the Commission’s six recommendations to the Governor and the Legislature, four relate to “providing additional protections surrounding the disclosure of home addresses.” *Ibid.*; Bernstein v. Borough of Woodcliff Lake, GRC Complaint No. 2005-02 (July 2005).

Analysis

Whether the Complainant's records request is valid under OPRA?

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 the instant complaint, of issue is whether the Complainant's request for names and addresses of people in Ocean County over the age of 55 who receive tenant based rental assistance (Section 8, State Rental Assistance Program, etc.) from the Department of Community Affairs is a valid request under OPRA. Here, the Complainant's request is invalid under OPRA because it fails to specify identifiable government records sought and requires the Custodian to perform research to locate and identify responsive records.

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). As the court noted in invalidating MAG's request under OPRA:

“Most 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.* at 549.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹¹ 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.”¹²

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court enumerated the responsibilities of a custodian and a requestor as follows:

“OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require “extraordinary expenditure of time and effort” and warrant assessment of a “service charge,” and, when unable to comply with a request, “indicate the specific basis.” N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*” (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, 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

¹¹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹² As stated in Bent, *supra*.

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).”

In the instant matter, the Complainant’s request failed to name a specific identifiable record. Instead, the Complainant seeks the names and addresses of a *class* of individuals (specifically, those individuals over 55 living in Ocean County who receive rental assistance from the Department of Community Affairs). Accordingly, the Complainant’s request requires research which is outside the scope of those responsibilities prescribed to custodians under OPRA. See NJ Builders, supra, 390 N.J. Super. at 177. Accordingly, the Complainant’s request is *not* encompassed by OPRA. Furthermore, the Council finds that the Complainant’s request fails to specify an identifiable government record with “reasonable clarity” as required by Bent, supra.

Therefore, the Complainant’s request is invalid under OPRA because it fails to specify identifiable government records sought and requires research outside of those responsibilities prescribed for Custodians by OPRA. 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). See also Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In addition, the Council also notes that the Complainant’s request may invoke privacy concerns. However, the Council has determined that the Complainant’s request is invalid under OPRA. Therefore, the Council will not address potential privacy issues arising out of the Complainant’s request.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid under OPRA because it fails to specify identifiable government records sought and requires research outside of those responsibilities prescribed for Custodians by 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, 180

(App. Div. 2007). *See also* Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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February 21, 2012¹³

¹³ This complaint was prepared for adjudication on November 23, 2010; however, said complaint was not adjudicated due to the Council's lack of quorum.
Michael Pushko v. New Jersey Department of Community Affairs, Div. of Housing and Community Resources, 2009-269 -- Findings and Recommendations of the Executive Director