



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

November 30, 2010 Government Records Council Meeting

Kenneth Mayer
Complainant

Complaint No. 2009-336

v.

Borough of Roselle (Union)
Custodian of Record

At the November 30, 2010 public meeting, the Government Records Council (“Council”) considered the November 23, 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. Because the Custodian responded to the Complainant in writing within the statutorily mandated seven (7) business day response time frame making two (2) records responsive available after payment of the copy cost of \$10.75, the Custodian responded timely and appropriately and thus has not unlawfully denied access to said records.
2. Because the Complainant’s request for “any and all documents and records concerning 116-122 Chestnut Street, including but not limited to: complete construction permit files, fire prevention records, health department records and housing inspections records”, as well as “any and all documents and records concerning the fire at the above location on or about November 18, 2008, including but not limited to police and fire department reports” does not specifically identify any government records except for the police and fire department reports regarding the fire at 116-122 Chestnut Street on or about November 18, 2008, the remainder of the Complainant’s request is not a valid OPRA request and OPRA does not require custodians to research files to discern which records may be responsive to such requests pursuant to the Superior Court’s decisions in 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) and the Council’s decision in Feiler-Jampel v. Somerset County Prosecutor’s Office, GRC Complainant No. 2007-190 (March 2008). As such, the Custodian has not unlawfully denied access to this portion of 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 30th Day of November, 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: December 6, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 30, 2010 Council Meeting**

**Kenneth Mayer¹
Complainant**

GRC Complaint No. 2009-336

v.

**Borough of Roselle (Union)²
Custodian of Records**

Records Relevant to Complaint:

- (1) Any and all documents and records concerning 116-122 Chestnut Street, including but not limited to: complete construction permit files, fire prevention records, health department records and housing inspection records.

- (2) Any and all documents and records concerning the fire at the above location on or about November 18, 2008, including but not limited to police and fire department reports.

Request Made: November 9, 2009³

Response Made: November 13, 2009

Custodian: Doreen Cali, Municipal Clerk

GRC Complaint Filed: December 30, 2009⁴

Background

November 9, 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 that was faxed to the Custodian.

November 12, 2009

Telephone call from the Custodian to the Complainant. The Custodian left a voicemail message for the Complainant regarding the request in which the Custodian asked for a return call.

¹ No legal representation listed on record.

² Represented by Blake Johnstone, Esq. (Westfield, NJ).

³ The Custodian certifies in the Statement of Information that she received Complainant's OPRA request on November 9, 2009.

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

November 13, 2009

Telephone call from the Custodian to the Complainant. The Custodian left a voicemail message for the Complainant regarding the availability of two (2) records responsive to the request and the broad and unclear nature of the remainder of the request.

November 13, 2009

Custodian's Response to the Complainant's OPRA Request. The Custodian responded on the fourth (4th) business day after receipt of the Complainant's OPRA request. On the Custodian's "Public Records Request Response" form, the Custodian stated that the restaurant health license is available for \$0.75 and is the only health record responsive to the request that exists. The Custodian also stated that the fire report is available for \$10.00.

Further, the Custodian stated that the remainder of the request for "any and all documents and records" requires more specificity as to the records being requested. Lastly, the Custodian stated that OPRA does not require custodians to research files to discern which records may be responsive to a request pursuant to the Superior Court's decisions in 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, 37 (App. Div. 2005) and the Council's decision in Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complainant No. 2007-190 (March 2008).

December 30, 2009

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's faxed OPRA request dated November 6, 2009. The Complainant does not agree to mediate this complaint. The Complainant indicates that he did not receive a response from the Custodian regarding this OPRA request.

January 15, 2010

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

January 19, 2010

Custodian's SOI with the following attachments:

- Complainant's OPRA request date stamped received on November 9, 2009.
- Letter from the Custodian to the Complainant dated November 13, 2009.

The Custodian certifies that as part of her search for records responsive to the Complainant's OPRA request she went to the Health Department Secretary and obtained the only health record responsive that exists in the Borough of Roselle Park (a restaurant health license). Further, the Custodian certifies that she obtained a copy of the fire report requested. The Custodian also certifies that fire investigations must be retained pursuant to records retention requirements for seven (7) years unless there is litigation.

The Custodian certifies that she called the requestor on November 12, 2009 and left a message that the fire report and restaurant health license were available for \$10.75. The Custodian certifies that in the same voicemail message, she informed the

Complainant that in regard to the remainder of the request, the Complainant needs to be more specific because the request is too broad and unclear as written. The Custodian certifies that she called the Complainant again on November 13, 2009 and left another voicemail message. Lastly, the Custodian certifies that she sent a written record request response to the Complainant on November 13, 2009.

The Custodian certifies that there was no unlawful denial of access to records responsive to the Complainant's request because, except for the two (2) records made available to the Complainant in writing on November 13, 2009 without any redactions, the request was not specific enough to identify which records were being requested or the time frame for the records requested. The Custodian certifies that the Complainant has never contacted or responded to the Custodian regarding this request.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In this complaint, the Complainant asserts that the Custodian unlawfully denied access to “any and all documents and records concerning 116-122 Chestnut Street, including but not limited to: complete construction permit files, fire prevention records,

health department records and housing inspections records”, as well as “any and all documents and records concerning the fire at the above location on or about November 18, 2008, including but not limited to police and fire department reports.”

Conversely, the Custodian asserts that she made two records available to the Complainant for the total copy cost of \$10.75 in a written response to the Complainant on November 13, 2009, four (4) business days after the Custodian’s receipt of the OPRA records request. In the written response, the Custodian stated that the restaurant health license and the fire report were available after the copy cost is paid.

Therefore, because the Custodian responded to the Complainant in writing within the statutorily mandated seven (7) business day response time frame making two (2) records responsive available after payment of the copy cost of \$10.75, the Custodian responded timely and appropriately and thus has not unlawfully denied access to said records.

Further, the Custodian stated in the written response that the remainder of the request for “any and all documents and records” requires more specificity as to the records being requested and that OPRA does not require custodians to research files to discern which records may be responsive to a request pursuant to the Superior Court’s decisions in 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, 37 (App. Div. 2005) and the Council’s decision in Feiler-Jampel v. Somerset County Prosecutor’s Office, GRC Complainant No. 2007-190 (March 2008).

Specifically, 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),⁵ 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.”⁶

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

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

⁶ 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...”

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 case law, the Complainant’s request for “any and all documents and records concerning 116-122 Chestnut Street, including but not limited to: complete construction permit files, fire prevention records, health department records and housing inspections records”, as well as “any and all documents and records concerning the fire at the above location on or about November 18, 2008, including but not limited to police and fire department reports” does not specifically identify any government records except for the police and fire department reports regarding the fire at 116-122 Chestnut Street on or about November 18, 2008. Therefore, the remainder of the Complainant’s request is not a valid OPRA request and OPRA does not require the custodian to research files to discern which records may be responsive to such requests pursuant to the Superior Court’s decisions in 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) and the Council’s decision in Feiler-Jampel v. Somerset County Prosecutor’s Office, GRC Complainant No. 2007-190 (March 2008). As such, the Custodian has not unlawfully denied access to this portion of the Complainant’s OPRA request.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian responded to the Complainant in writing within the statutorily mandated seven (7) business day response time frame making two (2) records responsive available after payment of the copy cost of \$10.75, the Custodian responded timely and appropriately and thus has not unlawfully denied access to said records.
2. Because the Complainant’s request for “any and all documents and records concerning 116-122 Chestnut Street, including but not limited to: complete construction permit files, fire prevention records, health department records and housing inspections records”, as well as “any and all documents and records concerning the fire at the above location on or about November 18, 2008, including but not limited to police and fire department reports” does not specifically identify any government records except for the police and fire department reports regarding the fire at 116-122 Chestnut Street on or about November 18, 2008, the remainder of the Complainant’s request is not a valid OPRA request and OPRA does not require custodians to research files to

discern which records may be responsive to such requests pursuant to the Superior Court's decisions in 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) and the Council's decision in Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complainant No. 2007-190 (March 2008). As such, the Custodian has not unlawfully denied access to this portion of the Complainant's OPRA request.

Prepared and
Approved By: Catherine Starghill, Esq.
Executive Director

November 23, 2010