



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

June 29, 2010 Government Records Council Meeting

James Sage
Complainant

Complaint No. 2009-43

v.

County of Monmouth, Board of Chosen Freeholders
Custodian of Record

At the June 29, 2010 public meeting, the Government Records Council (“Council”) considered the June 22, 2010 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that because the Complainant’s request would require the Custodian to conduct research in order to respond to the request, the Complainant’s request is invalid under OPRA. 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’ Ass’n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 29th Day of June, 2010

Robin Berg Tabakin, Chair
Government Records Council



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

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: July 13, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**James Sage¹
Complainant**

GRC Complaint No. 2009-43

v.

**County of Monmouth, Board of Chosen Freeholders²
Custodian of Records**

Records Relevant to Complaint: The name, title and position of the person who was appointed as a “provisional employee” to the job title of “Senior Traffic Analyst.”³

Request Made: January 15, 2009

Response Made: January 26, 2009

Custodian: Deana Valiante

GRC Complaint Filed: February 4, 2009⁴

Background

January 15, 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.

January 26, 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.⁵ The Custodian states that the Complainant’s request for the name and title of the person appointed to the job title of “Senior Traffic Analyst” is denied because the Complainant failed to specify an identifiable government record.⁶

February 4, 2009

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

¹ No legal representation listed on record.

² Represented by Parthenopy A. Bardis, Esq. (Freehold, NJ).

³ The Complainant requested additional records which are not at issue in this complaint.

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

⁵ The evidence of record shows that the Custodian received the Complainant’s OPRA request on January 20, 2009 as noted on the Complainant’s OPRA request thereon.

⁶ The Complainant inquired as to the status of his OPRA request in a letter to Ms. Fredrica A. Brown, Personnel Officer dated January 29, 2009.

- Complainant’s OPRA request dated January 15, 2009.
- Letter from the Custodian to the Complainant dated January 26, 2009 attaching the Complainant’s OPRA request with the Custodian’s response thereon.

The Complainant states that he submitted an OPRA request to the Custodian on January 15, 2009. The Complainant states that the Custodian denied access to the request relevant to this complaint on January 26, 2009, stating that the request was invalid because it failed to specify an identifiable government record.

The Complainant contends that N.J.S.A. 47:1A-10 clearly states that personnel records are not considered public documents “except that, an *individual’s name, title, position, salary, payroll records, length of service, date of separation and reason therefore, and the amount and type of any pension received shall be a government record.*” (Emphasis added.) The Complainant contends that his request was for the information enumerated as subject to disclosure pursuant to OPRA and should have been provided.

The Complainant does not agree to mediate this complaint.

March 3, 2009

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

March 10, 2009

Custodian’s SOI attaching a letter from the Custodian to the Complainant dated January 26, 2009 and the Complainant’s OPRA request with the Custodian’s response thereon.

The Custodian certifies that no search was undertaken because the Complainant’s request fails to specify an identifiable government record.⁷

Counsel contends that the Custodian lawfully denied access to the Complainant’s OPRA request because the request fails to identify a specific government record. Counsel states that a “government record” is defined under OPRA as follows:

“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.

Counsel asserts that the Complainant’s OPRA request would have forced the Custodian to research and analyze all her records in order to determine which records would be responsive to the Complainant’s request, which the Custodian is not obligated to do

⁷ The Custodian did not certify to whether records were destroyed pursuant to the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management (“DARM”) because no records responsive were identified.

pursuant to the court's holding in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).

Additionally, Counsel disputes the Complainant's contention in his Denial of Access Complaint that he is entitled to the information requested pursuant to N.J.S.A. 47:1A-10. Counsel states that N.J.S.A. 47:1A-10 provides that personnel or pension records shall not be considered government records and shall not be made available to public access, "except that: an individual's name, title, position..." shall be a government record. Counsel contends that the Complainant failed to identify a specific individual or party that would have enabled the Custodian to appropriately respond to the Complainant's request without conducting research.

Counsel requests that the Custodian's denial of access be upheld.

Analysis

Whether the Complainant's OPRA request is a valid OPRA request?

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 further provides that:

"...the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record ... except that ... an individual's name, title, [and] position ... shall be a government record[.]" N.J.S.A. 47:1A-10.

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 matter before the Council, the Complainant requested on January 15, 2009 the name, title and position of the person who was appointed as a “provisional employee” to the job title of “Senior Traffic Analyst.” The Custodian responded on January 26, 2009, stating that the Complainant’s request failed to identify a specific government record. The Complainant’s request seeks personnel information (“name, title and position”) which is specifically considered to be a government record under N.J.S.A. 47:1A-10. However, the Complainant’s request is nevertheless invalid under OPRA because said request fails to specify an individual’s name; in order to respond to the request, the Custodian would be required to conduct research to identify and locate records responsive to the request.

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. Wholesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein. In short, OPRA does not countenance open-ended searches of an agency’s files.” (Emphasis added.) *Id.* at 549.

In determining that MAG Entertainment’s request for “all documents or records” from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that

“[m]ost 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.*

The Appellate Division later noted that “[r]esearch is not among the custodian’s responsibilities” under OPRA. New Jersey Builders’ Ass’n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007).

In the instant matter, the Complainant’s request for “the name, title and position of the person who was appointed as a ‘provisional employee’ to the job title of ‘Senior Traffic Analyst’” would require the Custodian to manually search through all of the agency’s files, analyze such files for records containing the information sought, identify the particular record containing the information requested and redact any contents of such records that may be exempt from disclosure before providing such record to the Complainant. As the Appellate Division held in MAG, supra, custodians are not required to conduct research in order to respond to a valid OPRA request.

Therefore, because the Complainant’s request would require the Custodian to conduct research in order to respond to the request, the Complainant’s request is invalid under OPRA. 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’ Ass’n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant’s request would require the Custodian to conduct research in order to respond to the request, the Complainant’s request is invalid under OPRA. 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’ Ass’n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007).

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

June 22, 2010