



**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 28, 2011 Government Records Council Meeting**

Rory Moore  
Complainant

Complaint No. 2010-110

v.

Township of Nutley (Essex)  
Custodian of Record

At the June 28, 2011 public meeting, the Government Records Council (“Council”) considered the June 21, 2011 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 May 18, 2010 request fails to identify a specific government record or a specific time period within which the Custodian could focus her search for the requested entries but rather seeks general information from a database, the Complainant’s request is invalid under OPRA 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). Accordingly, the Custodian has not unlawfully denied access to the Complainant’s 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 28<sup>th</sup> Day of June, 2011

Robin Berg Tabakin, Chair  
Government Records Council



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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: July 12, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 28, 2011 Council Meeting**

**Rory Moore<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-110**

v.

**Township of Nutley (Essex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of the information contained within the database purchased by the Township of Nutley (“Township”) each June in its original format. The database contains all journal entries and expenditures to and from the Township’s accounts, to include funds submitted from the Township to the Township of Nutley Board of Education (“BOE”) and the reason for payment.

**Request Made:** May 18, 2010

**Response Made:** May 20, 2010

**Custodian:** Evelyn Rosario

**GRC Complaint Filed:** May 25, 2010<sup>3</sup>

**Background**

**May 18, 2010**

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. The Complainant indicates that his preferred method of delivery is via e-mail.

**May 20, 2010**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the second (2<sup>nd</sup>) business day following receipt of such request. The Custodian states that she along with the Chief Financial Officer (“CFO”) and the Custodian’s Counsel reviewed the Complainant’s OPRA request and are unable to determine what records the Complainant is seeking. The Custodian states that the Complainant’s request is unclear and is therefore denied. The Custodian requests that the Complainant resubmit his request clearly indicating the records sought.

**May 25, 2010**

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

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

<sup>2</sup> Represented by Kevin P. Harkins, Esq. (Ridgewood, NJ).

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

- Complainant's OPRA request dated May 18, 2010.
- Letter from the Custodian to the Complainant dated May 20, 2010.

The Complainant states that he submitted an OPRA request to the Township on May 18, 2010. The Complainant states that the Custodian responded in writing on May 20, 2010 denying access to his request stating that it was unclear.

The Complainant asserts that Commissioner Thomas Evans ("Commissioner Evans"), Department of Revenue and Finance, purchased an accounting system in June to handle all journal and ledger entries and transfers between accounts on a yearly basis. The Complainant asserts that he wants a list of all funds submitted from the BOE to the Township for shared services. The Complainant argues that an accountant technician would understand how to fulfill the Complainant's request.

The Complainant agrees to mediate this complaint.

#### **May 25, 2010**

Offer of Mediation sent to the Custodian.

#### **May 26, 2010**

Letter from the Custodian's Counsel to the GRC attaching the Custodian's executed mediation form. Counsel asserts that this complaint is both frivolous, without factual basis and should be administratively dismissed. Counsel argues that the Complainant's request is clearly overly broad and unclear. Counsel asserts that the Custodian denied the request on this basis.<sup>4</sup>

The Custodian declines mediation.

#### **June 7, 2010**

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

#### **June 11, 2010**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated May 18, 2010.
- Letter from the Custodian to the Complainant dated May 20, 2010.

The Custodian certifies that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM") is not applicable in the instant complaint.<sup>5</sup>

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<sup>4</sup> The Custodian's Counsel attached an Order and Opinion of the Honorable Patricia K. Costello, Assignment Judge Superior Court of New Jersey, Essex County dated November 14, 2007. Although the Complainant may be enjoined from filing criminal or civil complaints against the Township, complaints filed with the GRC are considered administrative complaints and therefore do not fall under the Order and Opinion of the Honorable Patricia K. Costello.

<sup>5</sup> The Custodian did not certify to the search undertaken in the instant complaint.

The Custodian certifies that she received the Complainant's OPRA request on May 18, 2010. The Custodian certifies that she reviewed the request along with Counsel and the CFO. The Custodian certifies that they could not determine the records sought by the Complainant. The Custodian certifies that she responded in writing on May 20, 2010 denying access to the Complainant's request because it was unclear.

The Custodian asserts that the Complainant submits numerous OPRA requests to the Township, a majority of which are unclear.<sup>6</sup>

### 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's request here sought "the information contained within the database" purchased by the Township on a yearly basis. The Complainant noted that said information should include journal entries and expenditures between the Township and BOE. The Custodian responded in a timely manner denying access to the Complainant's

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<sup>6</sup> The Complainant submitted additional correspondence that is not relevant to this complaint.  
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OPRA request stating that same was unclear. The Complainant filed the instant complaint disputing the Custodian's response.

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.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>7</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>8</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 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

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<sup>7</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>8</sup> As stated in Bent, *supra*.

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)."

This matter is substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of "[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present." *Id.* at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at 515-16.

Here, the Complainant sought "information," including journal entries and expenditures to and from the Township's accounts, from a database purchased by the Township; the request therefore seeks general categories of records but does not identify specific government records sought. Additionally, the Complainant's request failed to provide a specific time frame within which the Custodian could focus her search.

Therefore, because the Complainant's May 18, 2010 request fails to identify a specific government record or a specific time period within which the Custodian could focus her search for the requested entries but rather seeks general information from a database, the Complainant's request is invalid under OPRA pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*. Accordingly, the Custodian has not unlawfully denied access to the Complainant's request.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant's May 18, 2010 request fails to identify a specific government record or a specific time period within which the Custodian could focus her search for the requested entries but rather seeks general information from a database, the Complainant's request is invalid under OPRA 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). Accordingly, the Custodian has not unlawfully denied access to the Complainant's request.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

June 21, 2011