



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

March 27, 2012 Government Records Council Meeting

Cynthia Burton
(On behalf of The Philadelphia Inquirer)
Complainant

Complaint No. 2010-320, 2010-321 &
2010-322

v.

New Jersey Office of the Governor
Custodian of Record

At the March 27, 2012 public meeting, the Government Records Council (“Council”) considered the March 20, 2012 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 competent, credible evidence of record supports the Custodian’s legal certification that he provided the Complainant with a written response to the Complainant’s two (2) OPRA requests dated November 16, 2010, which are the subject of GRC Complaint Nos. 2010-320 and 2010-321, and because the Complainant has failed to provide any evidence to contradict the Custodian’s certification, the Custodian has timely responded to said OPRA requests pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. Because the competent, credible evidence of record supports the Custodian’s legal certification that he provided the Complainant with a written response to the Complainant’s OPRA request dated November 15, 2010, which is the subject of GRC Complaint No. 2010-322, and because the Complainant has failed to provide any evidence to contradict the Custodian’s certification, the Custodian has timely responded to said OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
3. Because the Complainant’s OPRA request which is the subject of GRC Complaint No. 2010-320 fails to identify the specific government records sought, said request is invalid under OPRA pursuant to Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011). As such, the Custodian has lawfully denied access to the Complainant’s OPRA request.
4. Because the Complainant’s OPRA request which is the subject of GRC Complaint No. 2010-321 fails to identify the specific government records sought, said request is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic

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Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). *See also* Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011). As such, the Custodian has lawfully denied access to the Complainant's OPRA request.

5. Because the requested record which is the subject of GRC Complaint Nos. 2010-322 does not exist on file and the Custodian is not required to create new records in response to an OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), the Custodian lawfully denied access to said record. Further, the portion of the request for "other materials used to publicize the Governor" is invalid as the request fails to specifically identify a government record.

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 27th Day of March, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Catherine Starghill, Executive Director
Government Records Council

Decision Distribution Date: April 5, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 27, 2012 Council Meeting**

Cynthia Burton¹ **GRC Complaint Nos. 2010-320, 2010-321, 2010-322**
(on behalf of The Philadelphia Inquirer)
Complainant

v.

NJ Office of the Governor²
Custodian of Records

Records Relevant to Complaint:

- GRC Complaint No. 2010-320: Travel records of Governor Christie and staff, including security details and others in attendance, as well as friends and relatives during 2010 on political trips, including but not limited to the governor's campaign stops for Republican candidates throughout the state and nation. Forms, times and amounts of reimbursements, as well as sources of those reimbursements. Full details on all expenses shouldered by state and others including campaigns, campaign accounts, private, non-profit, groups and individuals.
- GRC Complaint No. 2010-321: All travel and payroll records relevant to Governor Christie's work on behalf of Reform Jersey Now. This would include security detail and other state employees involved in travelling with the governor on RJN business including fundraisers. If the state covered travel or other expenses for non-employees, I would like the details of those expenses as well. If state expenses were reimbursed by individuals or groups, I would like all details on those expenses, as well including identities, dates, purposes and itemized amounts.
- GRC Complaint No. 2010-322: Electronic transmission of the full list of recipients of press releases, video clips, e-mails and other materials sent electronically to publicize Governor Christie. On the recipient lists, please include name, employer, as well as physical and email address. Also, supply the number and nature of materials sent to recipients on your distribution lists.

¹ No legal representation listed on record. However, while Cynthia Burton made the subject OPRA requests on behalf of the Philadelphia Inquirer, Matt Katz is acting as the current Complainant on behalf of the Philadelphia Inquirer.

² Represented by AAG Lewis Scheindlin, on behalf of the NJ Attorney General.

Requests Made: November 15, 2010³ and November 16, 2010⁴
Responses Made: November 24, 2010⁵ and November 26, 2010⁶
Custodian: Raymond A. Brandes
GRC Complaints Filed: December 6, 2010⁷

Background

November 15, 2010

Complainant's Open Public Records Act ("OPRA") request which is the subject of GRC Complaint No. 2010-322. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

November 16, 2010

Complainant's OPRA requests which are the subjects of GRC Complaint Nos. 2010-320 and 2010-321. The Complainant requests the records relevant to these complaints listed above on two (2) separate official OPRA request forms.

November 24, 2010

Custodian's response to the OPRA request which is the subject of GRC Complaint No. 2010-322. The Custodian responds in writing to the Complainant's OPRA request on the sixth (6th) business day following receipt of such request.⁸ The Custodian states that the Complainant's request is not a valid OPRA request as it fails to identify any specific government records and instead contemplates the creation of new government records. The Custodian also states that the contemplated scope of the request is unclear as to what constitutes "materials sent electronically to publicize Gov. Christie."

November 26, 2010

Custodian's responses to the OPRA request which are the subjects of GRC Complaint Nos. 2010-320 and 2010-321.⁹ The Custodian responds in writing to the Complainant's OPRA request on the seventh (7th) business day following receipt of such requests. The Custodian states that the Complainant's requests are not valid OPRA requests because they fail to identify any specific government records. The Custodian states that the Appellate Division held in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) that "[u]nder OPRA, agencies are required to disclose only 'identifiable' governmental record 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." The

³ Subject of GRC Complaint No. 2010-322.

⁴ Subjects of GRC Complaint Nos. 2010-320 and 2010-321.

⁵ Subject of GRC Complaint No. 2010-322.

⁶ Subjects of GRC Complaint Nos. 2010-320 and 2010-321.

⁷ The GRC received the Denial of Access Complaint on said date.

⁸ The Custodian certifies in the Statement of Information that he received said OPRA request on November 16, 2010.

⁹ The Custodian sent a separate response for each of these two (2) OPRA requests; however, said responses are identical and have been consolidated for the purposes of this background entry.

Custodian states that the Complainant's use of broad, undefined terms such as "travel records" and "political trips" renders this an invalid request requiring research.

Additionally, the Custodian states that State law and regulations prohibit State employees from participating in political activities on State time or utilizing State resources. As such, the Custodian states that State employees may only undertake political activities in their personal time and the State does not reimburse expenses for those events. The Custodian states that records regarding those events are typically not official government records subject to OPRA, as they are not "made, maintained or kept on file in the course of official business..."

Further, the Custodian states that, to the extent the Complainant is seeking records of the Executive Protection Unit of the New Jersey State Police, the Complainant should submit an OPRA request to the Department of Law & Public Safety. However, the Custodian states that this suggestion does not limit any rights of that entity to respond to the Complainant's request in any way.

December 6, 2010

Denial of Access Complaint Nos. 2010-320 and 2010-321¹⁰ filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA requests dated November 16, 2010
- Custodian's responses to the Complainant's OPRA request dated November 26, 2010

The Complainant states that she submitted her OPRA requests on November 16, 2010. The Complainant states that she received the Custodian's denial letters via e-mail on December 2, 2010, although the letters were dated November 26, 2010. The Complainant asserts that she has been unable to discuss these matters with the Custodian because he has not returned her telephone calls made each day since the Complainant received the denial letters on December 2, 2010.

Additionally, the Complainant agrees to mediate these complaints.

December 6, 2010

Denial of Access Complaint No. 2010-322 filed with the GRC with the following attachments:

- Complainant's OPRA request dated November 15, 2010
- Custodian's response to the Complainant's OPRA request dated November 24, 2010

The Complainant states that she submitted her OPRA request on November 15, 2010. The Complainant states that she received the Custodian's denial letter via e-mail on December 2, 2010, although the letter was dated November 24, 2010.

¹⁰ The Complainant filed two (2) separate Denial of Access Complaints regarding two (2) separate OPRA requests submitted on November 16, 2010.
Cynthia Burton (on behalf of The Philadelphia Inquirer) v. NJ Office of the Governor, 2010-230, 2010-321, 2010-322 – Findings and Recommendations of the Executive Director

The Complainant asserts that she has been unable to discuss these matters with the Custodian because he has not returned her telephone calls made each day since the Complainant received the denial letter on December 2, 2010. The Complainant believes that the Governor's Office maintains an e-mail distribution list that would contain the information that she is seeking but that she may not have used the proper terminology to request said list.

Additionally, the Complainant agrees to mediate these complaints.

December 10, 2010

Offer of Mediation sent to Custodian regarding all three (3) Denial of Access Complaints.

December 23, 2010

Custodian's signed Agreements to Mediate regarding all three (3) Denial of Access Complaints.

January 4, 2011

Complaints transferred to mediation.

August 24, 2011

Complaints referred back to the GRC for adjudication.

August 31, 2011

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

September 8, 2011

E-mail from Custodian's Counsel to GRC. Counsel requests a fifteen (15) day extension of time to submit the Custodian's completed SOIs in the three (3) Denial of Access Complaints.

September 9, 2011

E-mail from GRC to Custodian's Counsel. The GRC states that its practice is to grant custodians and/or legal counsel a five (5) business day extension of time to submit a completed SOI. The GRC states that because it has requested the Custodian to complete three (3) separate SOIs, Counsel's request for a 15 day extension of time is granted.

October 3, 2011

Custodian's SOI regarding GRC Complaint No. 2010-320 with the following attachments:

- Complainant's OPRA request dated November 16, 2010
- Custodian's response to the OPRA request dated November 26, 2010
- Custodian Counsel's letter brief dated October 3, 2011

The Custodian certifies that he received the Complainant's OPRA request on November 16, 2010. The Custodian certifies that he responded to said request on November 26, 2010.

Additionally, the Custodian asserts that the Complainant's OPRA request is unclear and overly broad. The Custodian contends that to the extent this request seeks records regarding the Governor's travel, said records are not public records as defined under OPRA and are not in the custody of the Governor's Office. The Custodian also certifies that he advised the Complainant that the Executive Protection Unit of the New Jersey State Police is the proper custodian for records regarding the Governor's security.

In support of his assertion that the Complainant's OPRA request is overly broad, the Custodian cites to Burton v. NJ Department of Law & Public Safety, GRC 10-330 (2011)¹¹ wherein the Council held that the complainant's request for travel and expense records was invalid for failing to identify specific government records. The Custodian also references the following legal authorities in support of his denial of access: Spectraserv, Inc. v. Middlesex County Utilities Authority, N.J. Super. (App. Div. 2010)("[T]he requestor must 'submit the request with information that is essential to permit the custodian to comply with its obligations...' (quoting N.J. Builders Ass'n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div.)(citing N.J.S.A. 47:1A-5(f), (g), (i))); MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005)(OPRA does not allow "[w]holesale requests for general information..."); Bent v. Twp. Of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005)(OPRA does not allow open-ended demands "for every document a public agency has on file."); Gannett New Jersey Partners, L.P. v. County of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005)("OPRA requires a party requesting access to a public record to specifically describe the document sought...").

The Custodian certifies that his search for the requested records is not applicable in this complaint. The Custodian also 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 is not applicable to this complaint.

Additionally, in the Custodian Counsel's enclosed letter brief dated October 3, 2011, Counsel contends that the Complainant's OPRA request is invalid for failing to identify the specific government records sought. Counsel states the Complainant used terms such as "travel records," "political trips" and "expenses" which do not reasonably identify any specific government records.

Counsel asserts this complaint is similar to Burton v. NJ Department of Law & Public Safety, GRC No. 2010-330 (June 1, 2011)¹² in which the Council held that a request to the State Police for gubernatorial travel records was invalid. Counsel states the request used the same generic terms as in this present complaint. Specifically,

"[a]ll travel, payroll and other expense records for costs incurred to cover the Governor as he traveled around the state and country to campaign for

¹¹ Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011).

¹² Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011).

candidates between Labor Day 2010 and Election Day 2010, as well as such records involving the Governor's participation in events for Reform Jersey Now during 2010."

Counsel states that the Council held under established case law, as well as prior GRC decisions, "travel records" and "expense records" are not requests for a specific identifiable government record. As such, the Council upheld the custodian's denial of access. Counsel contends that under the same reasoning, the Complainant's requests for "travel records of Gov. Christie and staff," as well as "expenses shouldered by state and others" is invalid for failing to identify specific government records. Additionally, Counsel asserts that the Complainant's use of the term "political trips" is so generic that it compels the Custodian to guess at what is being requested.

Additionally, Counsel contends that the defectiveness of this request is compounded by its use of an unclear term modifying the improper requests for "travel records" and "expenses" -- *i.e.*, "political trips." Counsel asserts that such generic, undefined language improperly compels the Custodian to guess at what is meant. Counsel states that the Custodian cannot know what the Complainant considers to be a political trip. Counsel also states that under OPRA, the Custodian is not obligated to research, analyze and categorize types of trips and then compile and collate information about them; however, this is precisely what this request involves. Counsel states that the request requires the Custodian to determine what trips are covered, research what dates these trips occurred, as the request provides no specifics, research who was in attendance, and compile a variety of information about each trip. As such, Counsel contends this is an invalid request under OPRA. See MAG, *supra*.

Further, Counsel asserts that the clear invalidity of the Complainant's OPRA request under the case law makes it unnecessary for the GRC to address the additional reason given for denying the request. However, for the sake of completeness, Counsel contends that to the extent the request sought information on political activities, records of that nature are not public records under OPRA pursuant to N.J.S.A. 47:1A-1.1 (defining government record as those documents made, maintained or kept on file in the course of "official business"). Specifically, Counsel asserts that if "political trips" is interpreted to mean activities unrelated to the Governor's official duties as the head of New Jersey government, any such records are not government records subject to OPRA, as they are not "made, maintained or kept on file in the course of ... official business." N.J.S.A. 47: 1A-1.1.

October 3, 2011

Custodian's SOI regarding GRC Complaint No. 2010-321 with the following attachments:

- Complainant's OPRA request dated November 16, 2010
- Custodian's response to the OPRA request dated November 26, 2010
- Custodian Counsel's letter brief dated October 3, 2011

The Custodian certifies that he received the Complainant's OPRA request on November 16, 2010. The Custodian certifies that he responded to said request on November 26, 2010.

Additionally, the Custodian asserts that the Complainant's OPRA request is unclear and overly broad. The Custodian contends that to the extent this request is seeking records regarding the Governor's travel, said records are not public records as defined under OPRA and are not in the custody of the Governor's Office. The Custodian also certifies that he advised the Complainant that the Executive Protection Unit of the New Jersey State Police is the proper custodian for records regarding the Governor's security.

In support of his assertion that the Complainant's OPRA request is overly broad, the Custodian recapitulates the legal authority to which he cited in the SOI for GRC Complaint No. 2010-320, submitted to the GRC on October 3, 2011.

The Custodian certifies that his search for the requested records is not applicable in this complaint. The Custodian also 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 is not applicable to this complaint.

In the Custodian Counsel's enclosed letter brief dated October 3, 2011, Counsel contends that the Complainant's OPRA request is invalid for failing to identify the specific government records sought. Counsel states the Complainant used terms such as "...records relevant to Gov. Christie's work on behalf of Reform Jersey Now" as well as "other expenses." Counsel contends that the request requires the Custodian to guess at what records are being requested.

Further, Counsel asserts that the defectiveness of this request is compounded by its demand that the custodian conduct research to find the pertinent information sought. Specifically, Counsel claims the request requires the Custodian to guess at what the requestor considers "work on behalf of Reform New Jersey Now," research what dates this occurred, as the requestor provided no specifics, research what individuals may have traveled with the Governor, and compile a variety of information about each trip. Counsel states that under OPRA the Custodian is not obligated to research, analyze and categorize types of trips and then compile and collate information about them. *See MAG, supra.*

Additionally, Counsel asserts that although the request mentions "payroll records," which are government records, this aspect of the request is invalid because it requires the custodian to conduct research to ascertain what payroll records may be responsive.

Further, Counsel asserts that the clear invalidity of the Complainant's OPRA request under the case law makes it unnecessary for the GRC to address the additional reason given for denying the request. However, for the sake of completeness, Counsel contends that to the extent the request sought information on political activities, records

of that nature are not public records under OPRA pursuant to N.J.S.A. 47:1A-1.1 (defining government record as those documents made, maintained or kept on file in the course of "official business"). Specifically, Counsel asserts that if "political trips" is interpreted to mean activities unrelated to the Governor's official duties as the head of New Jersey government, any such records are not government records subject to OPRA, as they are not "made, maintained or kept on file in the course of ... official business." N.J.S.A. 47: 1A-1.1.

October 3, 2011

Custodian's SOI regarding GRC Complaint No. 2010-322 with the following attachments:

- Complainant's OPRA request dated November 15, 2010
- Custodian's response to the OPRA request dated November 24, 2010
- Custodian Counsel's letter brief dated October 3, 2011

The Custodian certifies that he received the Complainant's OPRA request on November 16, 2010. The Custodian certifies that he responded to said request on November 24, 2010.

Additionally, the Custodian asserts that the Complainant's OPRA request is unclear and overly broad. In support of his assertion that the Complainant's OPRA request is overly broad, the Custodian recapsitulates the legal authority to which he cited in the SOI for GRC Complaint No. 2010-320, submitted to the GRC on October 3, 2011.

The Custodian certifies that his search for the requested records is not applicable in this complaint. The Custodian also 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 is not applicable to this complaint.

In Counsel's attached letter brief dated October 3, 2011, Counsel contends that the Custodian correctly denied the request here, which used the generic, non-specific phrase "other materials," and sought these, as well as emails and other records, "sent electronically to publicize Gov. Christie." Counsel asserts that the request improperly demanded all documents on file that publicize the Governor, an invalid blanket request. Moreover, Counsel contends that the request for undefined "other materials" is not a valid request for identifiable records.

Additionally, Counsel states that all of the types of records requested are those that "publicize" the Governor, a word that is facially unclear and open to interpretation. Counsel states that the definition of the word "publicize" is "to bring to the attention of the public," Webster's Third New International Dictionary, suggesting that the request covers all e-mails and other documents sent by the Governor's Office to notify the public about anything; under this interpretation, the request is an improper open-ended demand for all communications to the public. Counsel states that if the requestor meant the word to be interpreted more narrowly, the request did not so state. Thus, Counsel asserts that the request is inherently ambiguous and therefore invalid, in that it is impossible for the

Custodian to determine what the requestor would consider to constitute a communication publicizing the Governor.

Further, Counsel claims that the request submitted herein is also invalid as it requires the custodian to conduct research and create a new record. Counsel states that in addition to invalidly seeking a list of recipients of materials sent to publicize, the request further required that the list show certain information, including name, employer, physical address, e-mail address, the number of materials sent to each recipient and the nature of the materials. Counsel asserts this is both an invalid research request, under MAG, *supra*, as well as an improper request for creation of a new record.

November 29, 2011

Letter from GRC to Custodian's Counsel. The GRC requests a legal certification from the Custodian indicating whether the Office of the Governor maintains a recipient list for press releases and/or video clips. If no such record exists, the GRC requests the Custodian to so indicate. Conversely, if said record does exist, the GRC requests the Custodian to identify the type of information contained on the recipient list (such as name of recipient, e-mail address only, etc.).

December 6, 2011

E-mail from Custodian's Counsel to GRC. Counsel requests an extension of time to submit the requested certification of the Custodian.

December 7, 2011

E-mail from GRC to Custodian's Counsel. The GRC grants a five (5) business day extension of time for Counsel to submit the requested certification of the Custodian.

December 13, 2011

Custodian's Certification¹³. The Custodian certifies that the Communications Office within the Governor's Office maintains e-mail addresses for various contacts that are often utilized in the public distribution of press releases, and other distributions from the Communications Office. However, the Custodian certifies that the Governor's Office does not maintain a uniform recipient list for all press releases, video clips and other materials sent out publicly from the Governor's Office.

December 13, 2011¹⁴

Letter from Custodian's Counsel to GRC. Counsel states that the Custodian's submission of the requested certification is not a waiver of the Custodian's position that said certification is immaterial to the complaint. Counsel contends that the record referenced in the GRC's request for the certification – "a recipient list for press releases and/or video clips" – was not requested by the Complainant. Counsel asserts that the OPRA request which is the subject of GRC Complaint No. 2010-322 was invalid because it failed to identify any specific records, was unclear and contemplated the creation of

¹³ The Custodian's certification is undated but GRC received said certification on December 13, 2011.

¹⁴ The parties submitted additional correspondence. However, said correspondence is not relevant to the adjudication of these consolidated complaints because the submissions refer to an OPRA request that is not the subject of these complaints.

new records. As such, Counsel claims that whether the Governor's Office maintains an entirely different record is not relevant to the issue of the validity of the OPRA request which was submitted by the Complainant.

Analysis

Whether the Custodian timely responded to the Complainant's OPRA requests?

OPRA provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

Further, OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian's failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.¹⁵ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

GRC Complaint Nos. 2010-320 and 2010-321

The Complainant stated that she submitted her OPRA requests on November 16, 2010. The Custodian certified in his SOI that he received both OPRA request on said date. The Custodian also certified that he provided the Complainant with a written

¹⁵ It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

response to both OPRA requests on November 26, 2010, the seventh (7th) business day following the Custodian's receipt of the requests. However, the Complainant asserted in her Denial of Access Complaints that although the Custodian's response letters are dated November 26, 2010, the Complainant did not receive said responses until December 2, 2010 via e-mail. Nonetheless, the Complainant has failed to provide any specific evidence, namely the alleged e-mail dated December 2, 2010, to contradict the Custodian's certification that he provided written responses on November 26, 2010.

Therefore, because the competent, credible evidence of record supports the Custodian's legal certification that he provided the Complainant with a written response to the Complainant's two (2) OPRA requests dated November 16, 2010, which are the subject of GRC Complaint Nos. 2010-320 and 2010-321, and because the Complainant has failed to provide any evidence to contradict the Custodian's certification, the Custodian has timely responded to said OPRA requests pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

GRC Complaint No. 2010-322

The Complainant stated that she submitted her OPRA request on November 15, 2010. The Custodian certified in his SOI that he received the Complainant's OPRA request on November 16, 2010. The Custodian also certified that he provided the Complainant with a written response to the OPRA request on November 24, 2010, the sixth (6th) business day following the Custodian's receipt of the request. However, the Complainant asserted in her Denial of Access Complaints that although the Custodian's response letter is dated November 24, 2010, the Complainant did not receive said response until December 2, 2010 via e-mail. Nonetheless, the Complainant has failed to provide any specific evidence, namely the alleged email dated December 2, 2010, to contradict the Custodian's certification that he provided a written response on November 24, 2010.

Therefore, because the competent, credible evidence of record supports the Custodian's legal certification that he provided the Complainant with a written response to the Complainant's OPRA request dated November 15, 2010, which is the subject of GRC Complaint No. 2010-322, and because the Complainant has failed to provide any evidence to contradict the Custodian's certification, the Custodian has timely responded to said OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

Whether the Custodian unlawfully denied access to the requested records that are the subject of GRC Complaint No. 2010-320?

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 sought access to the following:

“travel records of Governor Christie and staff, including security details and others in attendance as well as friends and relatives during 2010 on political trips, including but not limited to the governor’s campaign stops for Republican candidates throughout the state and nation. Forms, times and amounts of reimbursements as well as sources of those reimbursements. Full details on all expenses shouldered by state and others including campaigns, campaign accounts, private, non-profit, groups and individuals.”

The Custodian denied access to the Complainant’s request on the basis that said request is not a valid OPRA request because it fails to identify any specific government records.

The Complainant sought access to “travel records.” “Travel records” are not a specific type of document. In fact, the Council has previously ruled on the validity of an OPRA request for “travel records.”

In Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011), the complainant sought access to “all travel, payroll and other expense records for costs incurred to cover the Governor as he traveled around the state and country to campaign for candidates between Labor Day 2010 and Election Day 2010, as well as such records involving the Governor’s participation in events for Reform Jersey Now during 2010.” The Council held that:

“‘travel records’ and ‘expense records’ are not requests for a specific identifiable government record. In order for this portion of the request to

seek specific government records the requestor would have to identify the specific types of travel records sought (such as toll receipts, parking receipts, stipend records, etc.) as well as the specific types of expense records (food vouchers/receipts, purchase orders, invoices, etc.). As written, the Complainant's request for travel and expense records provides a broad generic description of a category of records rather than identifying specific government records. Although the Complainant does provide specific time frames for the request, such information still does not make this request meet the level of specificity required for a valid OPRA request.

Therefore, the Complainant's request for 'travel' and 'expense' records fails to identify the specific government records sought, said 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). As such, the Custodian has not unlawfully denied access to said portion of the Complainant's OPRA request."

As in Burton, the OPRA request subject of GRC Complaint No. 2010-320 is not a request for a specifically identifiable government record. In order for this portion of the request to seek specific government records, the requestor would have to identify the specific types of travel records sought (such as toll receipts, parking receipts, stipend records, etc.) as well as the specific types of expense records (food vouchers/receipts, purchase orders, invoices, etc.). As written, the Complainant's request for travel records provides a broad generic description of a category of records rather than identifying specific government records.

Therefore, because the Complainant's OPRA request which is the subject of GRC Complaint No. 2010-320 fails to identify the specific government records sought, said request is invalid under OPRA pursuant Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011). As such, the Custodian has lawfully denied access to the Complainant's OPRA request.

Whether the Custodian unlawfully denied access to the requested records that are the subject of GRC Complaint No. 2010-321?

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 also states that:

“...*an individual's* name, title, position, salary, *payroll record*, length of service, date of separation and the reason therefor, and the amount and type of any pension received *shall be a government record...*” (Emphasis added). N.J.S.A. 47:1A-10.

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 sought access to the following:

“all travel and payroll records relevant to Governor Christie’s work on behalf of Reform Jersey Now. This would include security detail and other state employees involved in travelling with the governor on RJN business including fundraisers. If the state covered travel or other expenses for non-employees, I would like the details of those expenses as well. If state expenses were reimbursed by individuals or groups, I would like all details on those expenses as well including identities, dates, purposes and itemized amounts.”

The Custodian denied access to the Complainant’s request on the basis that said request is not a valid OPRA request because it fails to identify any specific government records.

Similar to the Council’s holding above regarding GRC Complaint No. 2010-320, the Complainant’s request for “travel records” in GRC Complaint No. 2010-321 is not a request for a specifically identifiable government record. In order for this portion of the request to seek specific government records, the requestor would have to identify the specific types of travel records sought (such as toll receipts, parking receipts, stipend records, etc.) as well as the specific types of expense records (food vouchers/receipts,

purchase orders, invoices, etc.). As written, the Complainant's request for travel records provides a broad generic description of a category of records rather than identifying specific government records.

However, the Complainant also requested "payroll records." OPRA specifically mandates that "an individual's...payroll record...shall be a government record..." N.J.S.A. 47:1A-10. Nevertheless, the Complainant has failed to provide any other specific information necessary for the Custodian to identify the specific payroll records requested. The Complainant identifies the requested payroll records as relating to Governor Christie's work on behalf of Reform Jersey Now. In order to fulfill the request as written, the Custodian would have to conduct research to determine the dates on which the Governor traveled on behalf of Reform Jersey Now. As stated in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), "[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.)

Therefore, because the Complainant's OPRA request which is the subject of GRC Complaint No. 2010-321 fails to identify the specific government records sought, said 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). *See also* Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011). As such, the Custodian has lawfully denied access to the Complainant's OPRA request.

Whether the Custodian unlawfully denied access to the requested records that are the subject of GRC Complaint No. 2010-322?

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 sought access to the following:

“electronic transmission of the full list of recipients of press releases, video clips, e-mails and other materials sent electronically to publicize Governor Christie. On the recipient lists, please include name, employer as well as physical and email address. Also, supply the number and nature of materials sent to recipients on your distribution lists.”

The Custodian denied access to the Complainant’s request on the basis that the request fails to identify any specific government records and instead contemplates the creation of new government records. The Custodian also stated that the contemplated scope of the request is unclear as to what constitutes “materials sent electronically to publicize Gov. Christie.”

Additionally, the GRC asked the Custodian to legally certify as to whether the Governor’s Office maintains a recipient list for press releases and/or video clips. On December 13, 2011, the Custodian legally certified that the Communications Office within the Governor’s Office maintains e-mail addresses for various contacts that are often utilized in the public distribution of press releases, and other distributions from the Communications Office. However, the Custodian certified that the Governor’s Office does not maintain a uniform recipient list for all press releases, video clips and other materials sent out publicly from the Governor’s Office. Along with the Custodian’s certification, the Custodian’s Counsel submitted a letter asserting that the Custodian’s submission of the requested certification is not a waiver of the Custodian’s position that said certification is immaterial to the complaint. Counsel contended that the record referenced in the GRC’s request for the certification – “a recipient list for press releases and/or video clips” – was not requested by the Complainant. Counsel asserted that the OPRA request subject of GRC Complaint No. 2010-322 was invalid because it failed to identify any specific records, was unclear and contemplated the creation of new records. As such, Counsel claimed that the question of whether the Governor’s Office maintains an entirely different record is not relevant to the issue of the validity of the OPRA request which was submitted by the Complainant.

However, the Complainant requested the following:

“electronic transmission of the *full list of recipients of press releases, video clips*, e-mails and other materials sent electronically to publicize Governor Christie. On the recipient lists, please include name, employer

as well as physical and email address. Also, supply the number and nature of materials sent to recipients on your distribution lists.” (Emphasis added).

Thus, the Complainant did, in fact, request the record which is the subject of the GRC’s letter to the Custodian dated November 29, 2011 – a recipient list for press releases and/or video clips. The Complainant’s request included additional information regarding the requested recipient list that the GRC did not include in its letter, namely that the Complainant wants the recipient list for materials used to publicize the Governor.

Regardless, the Custodian legally certified that the Governor’s Office does not maintain a recipient list for press releases and/or video clips. The Custodian certified that the Communications Office within the Governor’s Office maintains e-mail addresses for various contacts that are often utilized in the public distribution of press releases, and other distributions from the Communications Office.

As stated in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), “[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.) Thus, custodians are not required to create new records in response to OPRA requests when the requested record does not already exist.

Therefore, because the requested record which is the subject of GRC Complaint Nos. 2010-322 does not exist on file and the Custodian is not required to create new records in response to an OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), the Custodian lawfully denied access to said record. Further, the portion of the request for “other materials used to publicize the Governor” is invalid as the request fails to specifically identify a government record.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the competent, credible evidence of record supports the Custodian’s legal certification that he provided the Complainant with a written response to the Complainant’s two (2) OPRA requests dated November 16, 2010, which are the subject of GRC Complaint Nos. 2010-320 and 2010-321, and because the Complainant has failed to provide any evidence to contradict the Custodian’s certification, the Custodian has timely responded to said OPRA requests pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. Because the competent, credible evidence of record supports the Custodian’s legal certification that he provided the Complainant with a written response to

the Complainant's OPRA request dated November 15, 2010, which is the subject of GRC Complaint No. 2010-322, and because the Complainant has failed to provide any evidence to contradict the Custodian's certification, the Custodian has timely responded to said OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

3. Because the Complainant's OPRA request which is the subject of GRC Complaint No. 2010-320 fails to identify the specific government records sought, said request is invalid under OPRA pursuant to Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011). As such, the Custodian has lawfully denied access to the Complainant's OPRA request.
4. Because the Complainant's OPRA request which is the subject of GRC Complaint No. 2010-321 fails to identify the specific government records sought, said 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). *See also* Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2011). As such, the Custodian has lawfully denied access to the Complainant's OPRA request.
5. Because the requested record which is the subject of GRC Complaint Nos. 2010-322 does not exist on file and the Custodian is not required to create new records in response to an OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), the Custodian lawfully denied access to said record. Further, the portion of the request for "other materials used to publicize the Governor" is invalid as the request fails to specifically identify a government record.

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March 20, 2012