



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

May 24, 2011 Government Records Council Meeting

Gina Mae Randazzo-Thompson
Complainant

Complaint No. 2010-76

v.

City of Vineland (Cumberland)
Custodian of Record

At the May 24, 2011 public meeting, the Government Records Council (“Council”) considered the April 20, 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:

1. There is no evidence in the record to indicate that the Complainant herein knew of the right of confidentiality in her personnel file afforded pursuant to N.J.S.A. 47:1A-10, and therefore no evidence that she knowingly waived that right when she signed and submitted the OPRA request form. Accordingly, the Custodian properly denied access to the contents of the Complainant’s personnel file pursuant to W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 152 (1958), Country Chevrolet, Inc. v. Township of N. Brunswick Planning Bd., 190 N.J. Super. 376, 380 (App. Div. 1983), Paff v. Byrnes, 385 N.J. Super. 574 (App. Div. 2006), and N.J.S.A. 47:1A-10.
2. The Complainant’s request for the entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. Therefore, because the Complainant’s request for her entire personnel file fails to specify identifiable government records, the Complainant’s request is invalid under OPRA. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Richard Redden v. Cape May County Prosecutor’s Office, 2007-206 (September 2009); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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



Final Decision Rendered by the
Government Records Council
On The 24th Day of May, 2011

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: June 1, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 24, 2011 Council Meeting**

**Gina Mae Randazzo-Thompson¹
Complainant**

GRC Complaint No. 2010-76

v.

**City of Vineland (Cumberland)²
Custodian of Records**

Records Relevant to Complaint: Copies of the Complainant's entire personnel file kept in the Information Systems Division Office by the Director.

Request Made: January 6, 2010

Response Made: January 14, 2010

Custodian: Keith Petrosky

GRC Complaint Filed: April 1, 2010³

Background

December 21, 2009

E-mail from the Complainant to the Director of Data Processing, Victor Terenik, Jr. The Complainant requests a copy of her entire personnel file.

January 6, 2010

E-mail from Victor Terenik, Director, Information Services, to the Complainant. Mr. Terenik states that he has been informed that the Complainant will need to submit an OPRA request to obtain a copy of the requested records.

January 6, 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.

January 6, 2010

Memorandum from the Custodian to Denise Monaco, Business Administrator; Victor Terenik, Director of Data Processing; and Rosie Gonzalez, Personnel Officer. The Custodian informs the recipients that the Complainant has filed an OPRA request. The Custodian asks the recipients to assemble the requested records and deliver them to him for further processing. The Custodian informs the recipients of the seven (7) days OPRA allots for a timely response to the request. The Custodian instructs the recipients to send him a written response regardless of whether or not the recipients have records in response to the request.

¹ No legal representation listed on record.

² Represented by Edward F. Duffy, Esq. (Vineland, NJ).

³ The GRC received the Denial of Access Complaint on April 1, 2010.

January 14, 2010

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request. The Custodian informs the Complainant that copies of the personnel file are available to be picked up at a cost of \$28.75 and that the Complainant can make an appointment with him to review them.

January 15, 2010

E-mail from the Complainant to Custodian. The Complainant states that she will come down to see the custodian during her 15-minute break at 9:30 a.m.

January 15, 2010

E-mail from the Custodian to the Complainant. The Custodian states that there are duplicate records in the requested file. The Custodian informs the Complainant that she may choose to review the record instead of paying for copies of the entire file. The Custodian also instructs the Complainant how to pay for copies of the file via check.

January 24, 2010

Letter from the Complainant to the Custodian. The Complainant states that on December 21, 2009, she verbally requested a complete copy of her entire personnel file. The Complainant asserts that on January 6, 2010 Mr. Terenik informed her that she needed to make an OPRA request to obtain the records, which the Complainant did. The Complainant maintains that on January 12, 2010, she was notified that the records were ready for her to review and pickup. The Complainant asserts that the file she received was incomplete and that many documents were missing. The Complainant states that the Custodian told her that he would make the Business Administrator, Denise Monaco, aware of this problem. The Complainant states that she returned on January 20, 2010 and paid \$28.75 to retrieve what was available in the file.

The Complainant asks the Custodian to accept this letter as official notice of her complaint and her lack of receipt of the entire file. The Complainant adds that she is still awaiting the remainder of the file and that the seven (7) business days allowed by OPRA to respond to requests have long expired.

February 7, 2010

E-mail from the Complainant to the Custodian. The Complainant asks the Custodian if Mr. Terenik has supplied any additional records. The Complainant attaches a copy of her letter to the Custodian dated January 24, 2010.

March 31, 2010

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

- Complainant's OPRA request dated January 6, 2010
- Custodian's response to the OPRA request dated January 14, 2010
- E-mail from the Complainant to Custodian dated January 15, 2010
- E-mail from the Custodian to the Complainant dated January 15, 2010
- Letter from the Complainant to the Custodian dated January 24, 2010

The Complainant states that on December 21, 2009 she sent an e-mail to the Director of Data Processing, Victor Terenik, Jr., requesting a complete copy of her personnel file. The Complainant states that she received an e-mail from Mr. Terenik instructing her to fill out an OPRA request. The Custodian asserts that she filled out an official OPRA request form the same day and submitted it to the City Clerk's office. The Complainant further states that on January 12, 2010, the Custodian informed her that the requested personnel file was ready for pick up and set a mutually arranged pick up date of January 14, 2010.

The Complainant states that she sent the Custodian an e-mail on January 15, 2010, notifying him that she was out of work sick the day before and would pick up the file during her break on the morning of January 15, 2010. The Complainant asserts that the Custodian replied to her via e-mail and stated that there were duplicates of records in the file and further advised that the Complainant review the file before making a purchase so that the Complainant would not have to pay for duplicate records. The Complainant maintains that she replied to the Custodian by e-mail that she would review the file during her break.

The Complainant states that when she met with the Custodian, the Custodian advised her that she should not have been required to fill out an OPRA request form to see her own personnel file. The Complainant further states that the Custodian informed the Complainant that Mr. Terenik should have arranged an appointment with her so that she could sit down and view the file in person. The Complainant states that she then viewed the file. The Complainant notes that she made the Custodian aware that some records that were supposed to be in the personnel file were missing and, moreover, the version of the file that she was allowed to inspect contained only negative records: all positive performance review, recommendations, personnel action forms, and awards were missing from the requested file.

The Complainant states that the Custodian informed the Complainant that she was looking at the entire file. The Complainant further states that the Custodian stated that he could inform the Business Administrator, Denise Monaco, of the Complainant's concern about the missing records. The Complaint also states that she instructed the Custodian that doing so would be fine, but that Ms. Monaco would do nothing about the missing records because she is afraid of Mr. Terenik and the Mayor, Robert Romano.

The Complainant states that the Custodian asked if she wanted the file and she replied no because she already had what was in the file. That Complainant states that she told the Custodian that her purpose in requesting the file was to obtain all positive records that she personally knew were in the file because the Complainant had seen the documents herself while serving as Acting Director of Data Processing.

The Complainant states that on January 20, 2010, she changed her mind and decided to pick up the personnel file that she previously viewed. The Complainant states that on January 24, 2010, she sent the Custodian an e-mail notifying him that she did not receive the entire file within the seven (7) business days as required under OPRA. The Complainant states that she sent another e-mail to the Custodian on February 7, 2010 asking for an update. The Complainant further states that as of March 31, 2010, the Custodian had not replied to her e-mails dated January 24, 2010 or February 7, 2010. The Complainant asserts that the requested records have been destroyed and that Mr. Terenik is in violation of the records retention statute.

The Complainant asserts that N.J.A.C. 4A:1-2.2 provides that:

“a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;
2. Information on specific educational or medical qualifications required for employment;
3. Final orders of the Commissioner or Board; and
4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.” N.J.A.C. 4A:1-2.2.

The Complainant contends that the remainder of her personnel file is being withheld from her by Mr. Terenik to further his attempts at destroying her good name and reputation. The Complainant asserts that over the past 18 months, Mr. Terenik has systematically attacked her and her character. The Complainant maintains that by withholding and/or destroying all the positive records contained in her personnel file, any official records which support her outstanding work over the past ten (10) years of her employment with the City of Vineland have been removed from her personnel file.

The Complainant does not agree to mediate this complaint.

May 6, 2010

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

May 13, 2010

Custodian’s letter to Custodian’s Counsel. The Custodian states that the e-mails dated January 24, 2010 and February 7, 2010 that were addressed to him contain the wrong e-mail address. Therefore, the Custodian states that he never received these e-mails. The Custodian notes that he finds it curious that prior e-mails contained the correct e-mail addresses, while these two (2) e-mails did not.

May 18, 2010

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated January 6, 2010
- Memorandum from the Custodian to Ms. Monaco, Mr. Terenik, and Ms. Rosie Gonzalez dated January 6, 2010
- E-mail from the Complainant to the Custodian dated January 14, 2010
- E-mail from the Custodian to the Complainant dated January 14, 2010
- E-mail from the Complainant to the Custodian dated January 15, 2010

- E-mail from the Custodian to the Complainant dated January 15, 2010
- Letter from the Custodian to the Custodian's Counsel dated May 13, 2010⁴

The Custodian certifies that he received the OPRA request on January 6, 2010. The Custodian certifies that he advised the Complainant that the records were available in a telephone call on January 12, 2010 and an e-mail on January 14, 2010. The Custodian certifies that all of the records provided to him by the Information Systems Department Director were provided to the Complainant with no redactions. The Custodian certifies that no records were denied and that the personnel file, known internally as the Individual Employee Jacket File, has a retention requirement of six (6) years after termination of employment.⁵

The Custodian certifies that he prepared a memorandum dated January 6, 2010 that was circulated to Denise Monaco, Business Administrator, Victor Terenik, Information Systems Director, Rosie Gonzalez, Personnel Officer, and Robert Romano, Mayor, to ensure that the requested personnel file would be made available to the Complainant. The Custodian argues that absent any redactions or denial of the records, under the totality of the circumstances, there has been no knowing or willful violation of OPRA.

July 14, 2010

The Complainant's response to the Custodian's SOI. The Complainant asserts that a meeting was held on July 9, 2010 to discuss ongoing issues in her department. The Complainant states that she, Mr. Terenik, Ms. Monaco, and Ms. Sharon Scurlocke attended the meeting. The Complainant states that during the meeting, she asked Mr. Terenik what happened to her personnel file. The Complainant states that when she confronted Mr. Terenik about destroying records in her personnel file, Mr. Terenik and Ms. Monaco replied that they were not official records.

The Complainant alleges that Mr. Terenik stated that he destroyed all of the requested positive records when he became Acting Director of Data Processing in August 2008. The Complainant notes that the Custodian's SOI does not mention any destruction of the records, and that she is still employed by the City of Vineland so the records should not have been destroyed.⁶

February 21, 2011

The Custodian Counsel's e-mail to the GRC. The Custodian's Counsel certifies that he interviewed the City of Vineland's Director of Personnel who informed him that she had not destroyed any documents related to the Complainant's OPRA request or any other employee in the Department. The Custodian's Counsel certifies that he also spoke with the Director of the Information Systems Division who indicated that it had been the custom and practice of the Information Systems Division Director for many years to maintain informal records within the Department relating to employee performance and issues. The Custodian's Counsel certifies that these records are forwarded to the Personnel Office. The Custodian's Counsel certifies that the Information Systems Division Director informed him that he wanted everyone in the Department to start "fresh" and removed the informal records from his office.

⁴ Additional documentation not relevant to the adjudication of this matter was also submitted.

⁵ The Custodian failed to certify as to when any records responsive to the requests were destroyed.

⁶ The Complainant states that as of October, 2010, she is no longer employed by the City of Vineland.

The Custodian's Counsel certifies that his conversation with the Information Systems Division Director made him concerned that there was a possible violation of either OPRA and/or the Destruction of Public Records Act. Counsel certifies that he requested a meeting with the Information Systems Division Director at the office of another Assistant Solicitor, Michael Benson, Esq. Counsel certifies that the meeting revealed that the documents removed by the Information Systems Division Director had not been destroyed, but were instead boxed and placed in storage. Counsel certifies that he requested that the records be given to him so he could determine which documents were responsive to the Complainant's OPRA request.

March 1, 2011

Letter from City of Vineland Personnel Director, Rosalia Gonzalez to the GRC. Ms. Gonzalez certifies that she was requested to review the records under her supervision and control in response to the Complainant's OPRA request and produced the personnel records through the office of the City Clerk. Ms. Gonzalez certifies that she has not destroyed any records relating to the subject OPRA dispute or otherwise relating to the Complainant or any other employee within the Department other than through approved destruction of records procedures pursuant to state law.

March 2, 2011

Letter from Information Systems Division Director, Victor B. Terenik, Jr. to the GRC. Mr. Terenik certifies that it had been the long-standing custom and practice of the Information Systems Division Director to maintain informal records regarding employee issues that did not rise to a level that would require forwarding of the issues to the Personnel Office. Mr. Terenik certifies that these informal records were not considered "personnel records." Mr. Terenik certifies that when he became Director, he wanted everyone in the Department to start "fresh" and removed those documents from his office, boxed the documents, placed them in storage and forgot about them.

Mr. Terenik certifies that at a meeting with Assistant Solicitors Edward F. Duffy, Esquire and Michael Benson, Esquire, he was asked if he had destroyed any documents relating to the Complainant. Mr. Terenik certifies that he has not destroyed any such records and when requested to find and produce the records, he did so.

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 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.

OPRA also provides that:

“Notwithstanding the provisions of [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, ... shall not be considered a government record and shall not be made available for public access, except 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;

personnel or pension records of any individual shall be accessible ... *when authorized by an individual in interest...*” [Emphasis added]. N.J.S.A. 47:1A-10.

In the instant complaint, the Complainant has requested access to her “entire personnel file.” Pursuant to N.J.S.A. 47:1A-10, an individual’s personnel records are not considered a government record and are not available for access unless the individual in interest has authorized disclosure. Thus, an OPRA request for such records requires that the requestor waive his or her right of confidentiality in such personnel files.

Waiver is the voluntary and intentional relinquishment of a known right. W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 152 (1958). An effective waiver requires a party to have full knowledge of his legal rights and intend to surrender those rights. *Id.* at 153. The intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference. See Merchs. Indem. Corp. of N.Y. v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961), *aff’d*, 37 N.J. 114 (1962). The party waiving a known right must do so clearly, unequivocally, and decisively. Country Chevrolet, Inc. v. Township of N. Brunswick Planning Bd., 190 N.J. Super. 376, 380 (App. Div. 1983).

In Paff v. Byrnes, 385 N.J. Super. 574 (App. Div. 2006), the Appellate Division determined that an attorney hired by a municipality, who was required by the township’s ordinance to obtain a Certificate of Ethical Conduct from the New Jersey Office of Attorney Ethics in order to continue his employment, waived his right to confidentiality of the attendant ethics history report under N.J. Ct. R. 1:20-9 when he voluntarily completed the Authorization and Release form which permitted the release of his personal disciplinary records to the township. *Id.* at 579-80. The Appellate Division therefore reversed the trial court’s grant of summary judgment in favor of the township clerk and remanded the matter to the trial court for further consideration. *Id.*

In the matter before the Council, there is no evidence in the record to indicate that the Complainant herein knew of the right of confidentiality in her personnel file afforded pursuant to N.J.S.A. 47:1A-10, and therefore there is no evidence that she knowingly waived that right when she signed and submitted the OPRA request form. Accordingly, the Custodian properly denied access to the contents of the Complainant's personnel file pursuant to W. Jersey Title, supra, County Chevrolet, supra, Paff, supra, and N.J.S.A. 47:1A-10.

The Council now examines the nature of the request itself. While the Complainant asserts that the City of Vineland may have destroyed some of the records in her personnel file, the Custodian has certified that all of the records provided to him by the Information Systems Department Director were provided to the Complainant without redactions and that no records were denied. While the accuracy and veracity of the records contained in the personnel file are outside the Council's jurisdiction, the Council finds that the Complainant's request itself is invalid under OPRA because it fails to identify *specific* government records and constitutes a broad and unclear 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). As the court noted in invalidating MAG's request under OPRA:

"Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." Id. at 549.

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) Id.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁷ the complainant filed a request for public records with the Stafford Township Custodian of Records. In this request, which consisted of five subparts lettered "a" through "e," the complainant sought documents comprising the "entire file" of his criminal investigation conducted jointly by the Stafford Township Police Department (STPD), the United States Attorney for New Jersey, and a special agent of the Internal Revenue Service. Additionally, the complainant requested that the custodian provide him with "the factual basis underlying

⁷ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).
Gina Mae Randazzo-Thompson v. City of Vineland (Cumberland), 2010-76 – Findings and Recommendations of the Executive Director

documented action and advice to third parties to act against my interest [having] been credited to SPD under a Federal Grand Jury credit card investigation.” Id. at 33-34.

The Appellate Division determined that the GRC properly dismissed the complainant’s request and stated that:

“OPRA [does not] ‘authorize a party to make a blanket request for every document’ a public agency has on file. See Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205, 219, 877 A.2d 330 (App.Div.2005). Rather, a party requesting access to a public record under OPRA must specifically describe the document sought. Id.; see also MAG Entm’t, 375 N.J. Super. at 546-49, 868 A.2d 1067.” Bent, 381 N.J. Super. 30, 37.

The Appellate Division notes that in MAG, 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.”⁸

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

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

Moreover, the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...”

This is further exemplified in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); where the Council held that “[b]ecause the Complainant’s OPRA

⁸ As stated in Bent, *supra*.

requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

In Kenneth Mayer v. Borough of Roselle (Union), GRC Complaint No. 2009-336 (November 2010), the Council determined that 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” did 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, and that therefore this portion of the complainant’s request was not a valid OPRA request.

The Council has maintained that requests for entire files are blanket request that are overbroad and unclear. Under this rationale, the Council in the matter of Richard Redden v. Cape May County Prosecutor’s Office, 2007-206 (September 2009), held that a complainant’s OPRA request seeking access to an *entire* Prosecutor’s Office file, comprising three (3) banker boxes and over 2,500 pages was overbroad and of the nature of a blanket request because the complainant sought a class of various documents rather than a request for specific government record.

In the matter before the Council the Complainant’s request for the entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. Therefore, because the Complainant’s request for her entire personnel file fails to specify identifiable government records, the Complainant’s request is invalid under OPRA. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. There is no evidence in the record to indicate that the Complainant herein knew of the right of confidentiality in her personnel file afforded pursuant to N.J.S.A. 47:1A-10, and therefore no evidence that she knowingly waived that right when she signed and submitted the OPRA request form. Accordingly, the Custodian properly denied access to the contents of the Complainant’s personnel file pursuant to W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 152 (1958), Country Chevrolet, Inc. v. Township of N. Brunswick Planning Bd., 190 N.J. Super. 376, 380 (App. Div. 1983), Paff v. Byrnes, 385 N.J. Super. 574 (App. Div. 2006), and N.J.S.A. 47:1A-10.
2. The Complainant’s request for the entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. Therefore,

because the Complainant's request for her entire personnel file fails to specify identifiable government records, the Complainant's request is invalid under OPRA. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); Richard Redden v. Cape May County Prosecutor's Office, 2007-206 (September 2009); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

April 20, 2011