



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

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

May 29, 2012 Government Records Council Meeting

Keith A. Werner
Complainant

Complaint No. 2011-108

v.

NJ Department of Law & Public Safety,
Office of the Attorney General
Custodian of Record

At the May 29, 2012 public meeting, the Government Records Council (“Council”) considered the May 22, 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 the Complainant’s request is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties pursuant to Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); and 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).

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

Final Decision Rendered by the
Government Records Council
On The 29th Day of May, 2012

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: June 4, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 29, 2012 Council Meeting**

**Keith A. Werner¹
Complainant**

GRC Complaint No. 2011-108

v.

**NJ Department of Law & Public Safety,
Office of the Attorney General²
Custodian of Records**

Records Relevant to Complaint: Copies of:

“All library resources available to me pertaining to:

1. Law books
2. Legal magazines and periodicals
3. Legal reference materials
4. Computer access to legal topics including statutes, rules of evidence, and rules of civil procedure.”

Request Made: January 6, 2011

Response Made: January 31, 2011

Custodian: Bruce J. Solomon, Esq.

GRC Complaint Filed: March 26, 2011³

Background

January 6, 2011

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 requests that the Custodian specify the corresponding volume number of each book, as well as the publishing dates for all responsive rules and computer generated materials.

January 31, 2011

Custodian’s response to the OPRA request. The Custodian responds in writing via letter to the Complainant’s OPRA request on the same business day as the request was received.⁴ The Custodian states that OPRA mandates that a requestor must request documents with reasonable clarity and that OPRA does not authorize requestors to make unbridled searches of an agency’s property. The Custodian asserts that in N.J. Builder’s

¹ No legal representation listed on record.

² The Custodian, Bruce J. Solomon, Esq., is an attorney acting as Counsel representing the agency in this matter.

³ The GRC received the Denial of Access Complaint on said date.

⁴ The Custodian certifies in the SOI that he received the Complainant’s OPRA request on January 31, 2011. Keith A. Werner v. New Jersey Department of Law & Public Safety, Office of the Attorney General, 2011-108 – Findings and Recommendations of the Executive Director

Association v. COAH, 390 N.J. Super. 166 (App. Div. 2007), the Appellate Division stated that the requestor's obligation to specifically describe the document sought is essential to a public agency's ability to provide a prompt response under OPRA. The Custodian further asserts that the Complainant's request does not seek access to specifically identifiable government records and thus is overbroad and invalid.

March 26, 2011

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

- Complainant's OPRA request dated January 6, 2011
- Letter from the Custodian to the Complainant dated January 31, 2011

The Complainant states that the Custodian's response to his request is untimely. The Complainant contends that his request is neither overbroad nor vague because a reasonably intelligent person can ascertain what he is requesting. The Complainant argues that the Custodian is purposely denying access to the requested records in bad faith. The Complainant requests that the GRC order the Custodian to disclose the requested records.

The Complainant agrees to mediate this complaint.

April 8, 2011

Offer of Mediation sent to both parties.

April 8, 2011

The Custodian declines mediation.

April 8, 2011

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

June 17, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated January 6, 2011
- Letter from the Custodian to the Complainant dated January 31, 2011

The Custodian certifies that the Office of the Attorney General is not in possession of any records that are responsive to the Complainant's request. The Custodian further certifies that although the Complainant's request was dated January 6, 2011, the Custodian did not receive the request until January 31, 2011. The Custodian contends that the Complainant's request is overbroad and improper pursuant to the New Jersey Appellate Division's decision in MAG Entertainment LLC v. Division of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) (holding that under OPRA, agencies are required to disclose only "identifiable government records not otherwise exempt... [and that] OPRA does not countenance open-ended searches of an agency's files). *See also*, Gannett New Jersey Partners, LP v. County of Middlesex, 379 N.J.

Super. 205 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't., 381 N.J. Super. 30 (App. Div. 2005); and N.J. Builder's Association v. COAH, 390 N.J. Super. 166 (App. Div. 2007). The Custodian argues that read on its face, the Complainant's OPRA request would require the Office of the Attorney General to provide him with a copy of every law book, legal magazine and periodical, legal reference material, and computerized legal resource that is available to him in the New Jersey State Prison. The Custodian further states that outside of any copyright and proprietary interests possessed by the copyright holders of such materials, the Complainant has failed to request specific, identifiable records.

The Custodian further contends that even if the Complainant's request were valid, the Office of the Attorney General is not in possession of such records and in addition, convicted felons incarcerated in the New Jersey State Prison do not have access to the Attorney General's Library maintained by the Office of the Attorney General.

June 23, 2011

The Complainant's response to the Custodian's SOI. The Complainant asserts that the Custodian's denial of access is unlawful because the Custodian wrongly contends that the Complainant's request is overbroad and vague. The Complainant states that his request sufficiently specifies identifiable records and that the Custodian is denying access to responsive records that are in the possession of the Department of Law and Public Safety.

Analysis

Whether the Complainant's records request is valid under OPRA?

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 the instant Complaint the Complainant is requesting “all library resources available to [him] pertaining to law books; legal magazines and periodicals; legal reference materials, and computer access to legal topics including statutes, rules of evidence, and rules of civil procedure.” Here, the Complainant’s request is invalid under OPRA because it fails to identify government records with reasonable specificity and would require research outside of the Custodian’s duties to fulfill.

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),⁵ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).
Keith A. Werner v. New Jersey Department of Law & Public Safety, Office of the Attorney General, 2011-108 – Findings and Recommendations of the Executive Director 4

with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.”⁶

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court 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...”

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant’s request sought:

- Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
- Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.

⁶ As stated in Bent, *supra*.

- Item No. 5: From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the complainant’s request, the Council found 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).”

As applied, the test under MAG is whether a requested record is a *specifically identifiable* government record. In the instant matter, the Complainant’s request fails to identify government records with reasonable specificity. Furthermore, the vagueness of the Complainant’s request would require the Custodian to conduct research in order to ascertain exactly what “library resources” are responsive to the Complainant’s request. Accordingly, the Complainant’s request fails the MAG requirement that a request for government records be made with reasonable specificity. Furthermore, the Complainant is attempting to use OPRA as a research tool and has made a request that would require the Custodian to conduct research to fulfill. Such research is outside of the duties prescribed to custodians under OPRA as it is not intended to be used as a research tool. *See NJ Builders*. The Complainant’s request is therefore invalid under OPRA.

Therefore, the Complainant’s request is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties pursuant to Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); and 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).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties pursuant to Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); and 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).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

May 22, 2012