



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**September 25, 2012 Government Records Council Meeting**

Branden Coughlin  
Complainant

Complaint No. 2011-120

v.

Borough of High Bridge (Hunterdon)  
Custodian of Record

At the September 25, 2012 public meeting, the Government Records Council (“Council”) considered the September 18, 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 specifically name identifiable individual senders and recipients and because the request requires research beyond the scope of a custodian’s duties pursuant to 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). *See also* Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010).

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 25<sup>th</sup> Day of September, 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: October 1, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 25, 2012 Council Meeting**

**Branden Coughlin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-120**

v.

**Borough of High Bridge (Hunterdon)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

An electronic copy of all e-mails to and from the golf department for the year 2010 for everything performed on behalf of the Borough of High Bridge (“Borough”).<sup>3</sup>

**Request Made:** February 25, 2011

**Response Made:** February 28, 2011

**Custodian:** Diane Seals

**GRC Complaint Filed:** April 13, 2011<sup>4</sup>

**Background**

**February 25, 2011**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above in an e-mail referencing OPRA. The Complainant indicates that the preferred method of delivery is via e-mail.

**March 1, 2011**

Custodian’s response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant’s OPRA request on the second (2<sup>nd</sup>) business day following receipt of such request. The Custodian states that the request for e-mails is too vague and requests that the Complainant be more specific.

**March 22, 2011<sup>5</sup>**

E-mail from the Custodian to the Complainant. The Custodian requests an extension and states that she will need additional time to produce all of the 2010 golf related e-mails due to the volume of the request.

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

<sup>2</sup> Represented by Barry S. Goodman, Esq., of Greenbaum, Rowe, Smith, and Davis LLP (Woodbridge, NJ).

<sup>3</sup> The Complainant has made requests for additional items that are not the subject of this Complaint.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

<sup>5</sup> This communication appears to be the result of some contact between the parties that has not been memorialized in the evidence in the record.

**March 28, 2011**

E-mail from the Custodian to the Complainant. The Custodian states that the Borough is currently working on retrieving the requested e-mails. The Custodian maintains that given the scope and breadth of the request, over 1,000 e-mails are estimated to be responsive to the request. The Custodian requests that the Complainant narrow his request or the Borough will have to charge the Complainant for the extended effort to provide the e-mails. The Custodian asks the Complainant how to proceed with the request.

**April 4, 2011<sup>6</sup>**

E-mail from the Custodian to the Complainant. The Custodian states that there is no specific number of documents that will trigger the need to charge administrative cost. The Custodian asserts that it is the responsibility of the person requesting the documents to reasonably narrow and specify what exactly is sought in order to avoid an unusual administrative review that will tie up Borough staff. The Custodian requests that the Complainant specify exactly which documents he actually wants so that the request may be filled without additional costs.

**April 7, 2011<sup>7</sup>**

E-mail from the Custodian to the Complainant. The Custodian asks the Complainant whether he wishes to clarify and limit his request for e-mails. The Custodian further asks the Complainant if he is willing to incur the administrative fees that will be incurred if the search for the broad request is continued. The Custodian states that she cannot proceed without the Complainant's consent.

**April 13, 2011**

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

- Complainant's OPRA request dated February 25, 2011
- Letter from the Custodian to the Complainant dated March 1, 2011
- Letter from the Custodian to the Complainant dated March 22, 2011
- Letter from the Custodian to the Complainant dated March 28, 2011
- Letter from the Custodian to the Complainant dated April 4, 2011
- Letter from the Custodian to the Complainant dated April 7, 2011

The Complainant asserts that he has been denied access to the requested records. The Complainant agrees to mediate this complaint.

**August 21, 2011**

Offer of Mediation sent to the Custodian.

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<sup>6</sup> This communication appears to be the result of some contact between the parties that has not been memorialized in the evidence in the record.

<sup>7</sup> This communication appears to be the result of some contact between the parties that has not been memorialized in the evidence in the record.

**April 20, 2012**

The Custodian agrees to mediate the Complaint and the case is referred to mediation.

**July 31, 2012**

The case is referred back from mediation.

**August 21, 2012**

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

**August 27, 2012**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated February 25, 2011
- Letter from the Custodian to the Complainant dated March 1, 2011
- Letter from the Custodian to the Complainant dated March 22, 2011
- Letter from the Custodian to the Complainant dated March 28, 2011
- Letter from the Custodian to the Complainant dated April 4, 2011
- Letter from the Custodian to the Complainant dated April 7, 2011

The Custodian certifies that no search for the requested records has been done because the Complainant’s request is an invalid, overly broad request and accordingly, no responsive records have been destroyed. The Custodian certifies that the Borough does not have a specific and separate e-mail account for the golf department. The Custodian argues that the Complainant has not identified a sender or recipient in making his request for e-mails. In addition, the Custodian maintains that the Complainant’s subject of “everything performed on behalf of the Borough” is undefined and the request’s specified time frame is too broad. The Complainant further maintains that the Complainant refused to comply with the Borough’s requests to narrow the request and provide further specification.

The Custodian argues that the task of trying to ascertain what documents are responsive to the Complainant’s request is entirely different than simply producing identified documents that are in the Borough’s possession. The Custodian argues that the Borough has no duty to guess what a person submitting a request is trying to locate when the requestor has submitted a vague and overly broad request pursuant to the decision of MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In addition, the Custodian contends that the Complainant’s request for e-mails fails to meet the minimum standard of specificity required of OPRA requests for e-mails pursuant to the holding of Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07, 2009-08 (April 2010). The Custodian states that Elcavage requires a request for e-mails to name the (1) content and subject of the sought after e-mails, (2) the specific date or range of dates during which the e-mails were transmitted, and (3) the sender and

recipients of the e-mails. The Custodian argues that the Complainant has failed to identify the subject of the e-mails sought as the Complainant vaguely seeks “all e-mails to and from the golf department for the year 2010.” The Custodian contends that the Complainant has failed to identify any subject matter, recipients, or senders of the e-mails. The Custodian maintains that the GRC should find that the Complainant’s request is invalid per the GRC’s decision in Wolosky v. Twp. of Rockaway, GRC Complaint No. 2010-245 (February 2012). The Custodian argues that she made several attempts to have the Complainant narrow down his request, but he refused to do so. The Custodian certifies that the golf department does not have an e-mail address or database that is separate from any other department of the Borough, and specific recipients and senders must be identified in order for the request to be fulfilled. The Custodian maintains that even if the Custodian was able to fulfill the request, the amount of time and staff needed to comb through every e-mail in the Borough’s database would be onerous and require a special service charge.

### 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's request is invalid under OPRA because it fails to specifically identify the senders and/or recipients of the e-mails sought, fails to provide a specific subject matter sought, and therefore requires the Custodian to perform research to locate and identify responsive records.

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),<sup>8</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."<sup>9</sup>

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

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<sup>8</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>9</sup> As stated in Bent, *supra*.

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..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005)."

The test under MAG then, is whether a requested record is a *specifically identifiable* government record. If so, the record is disclosable, barring any exemptions to disclosure contained in OPRA. The GRC established the criteria deemed necessary to specifically identify an e-mail communication in Sandoval v. NJ State Parole Board, GRC Complaint No. 2006-167 (October 2008). In Sandoval, the Complainant requested "e-mail...between [two individuals] from April 1, 2005 through June 23, 2006 [using seventeen (17) different keywords]." The Custodian denied the request, claiming that it was overly broad. The Council determined:

"The Complainant in the complaint now before the GRC requested specific e-mails *by recipient, by date range and by content*. Based on that information, the Custodian has identified [numerous] e-mails which fit the specific recipient and date range criteria Complainant requested." (Emphasis added.) *Id.*

In Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010), the Council examined what constitutes a valid request for e-mails under OPRA. The Council determined that:



*“In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.”* (Emphasis in original). *Id.*

In the instant matter, although the Complainant’s request provided a specific range of dates in which the requested e-mails were transmitted, the request failed to name a particular subject matter, and also failed to name a specific identifiable sender and recipient: the request seeks e-mails from and to a specific *class* of employee (specifically, employees of the golf department) and not individually named senders and recipients. *See Elcavage, supra.* In order for the Custodian to respond to this request, the Custodian would be required to evaluate all e-mails in their database in order to determine whether the named recipients of such communications were employed in the golf department. Such a request is not feasible. Pursuant to Elcavage and MAG, it is not the Custodian’s duty to discern which e-mails in their database have been received by or sent to a golf department employee. A search for the individual employees’ names and related e-mail addresses would constitute *research* that is not the statutory duty of a Custodian. Moreover, the Custodian asked the Complainant to clarify the request on four different instances, and the Complainant declined to do so. Such a request is not in accordance with the requirements of MAG. Accordingly, the Complainant’s request is invalid.

Therefore, the Complainant’s request is invalid under OPRA because it fails to specifically name identifiable individual senders and recipients and because the request requires research beyond the scope of a custodian’s duties pursuant to MAG, supra; Bent, supra; NJ Builders, supra; Schuler, supra. *See also Elcavage, supra.*

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid under OPRA because it fails to specifically name identifiable individual senders and recipients and because the request requires research beyond the scope of a custodian’s duties pursuant to 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). *See also Elcavage v. West Milford Twp.*, GRC Complaint Nos. 2009-07 and 2009-08 (March 2010).

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

September 18, 2012