



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

December 18, 2012 Government Records Council Meeting

Bob Thomas
Complainant

Complaint No. 2011-275

v.

County of Camden
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the November 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 because the Complainant’s request fails to identify specific government records and requires the Custodian to conduct research in order to determine the records which may be responsive to the request item, the Complainant’s request is invalid under OPRA 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), and Kohn v. Township of Livingston (Essex), GRC Complaint No. 2009-313 (February 2011). As such, the Custodian has not unlawfully denied access to said request.

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

Final Decision Rendered by the
Government Records Council
On The 18th Day of December, 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: December 20, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 18, 2012 Council Meeting**

**Bob Thomas¹
Complainant**

GRC Complaint No. 2011-275

v.

**County of Camden²
Custodian of Records**

Records Relevant to Complaint: Copies of all written documentation including sources, letters, contracts, correspondence, e-mails, notes, telephone records received and utilized by Freeholder Cappelli to authenticate and verify his statements and data contained in a much published letter entitled, “Camden Needs a New Kind of Police Force,” dated August 4, 2011, to include “breathing bonus,” “22% shift differential,” “50% absentee rate” and “200,000 senior officer pay.”

Request Made: August 8, 2011

Response Made: August 15, 2011

Custodian: Maria Efstratiades

GRC Complaint Filed: August 17, 2011³

Background

August 8, 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.

August 15, 2011

Custodian’s response to the OPRA request.⁴ The Custodian responds in writing via letter to the Complainant’s OPRA request on the fifth (5th) business day following receipt of such request.⁵ The Custodian states that access to the requested record is denied because the request is overly broad in that it does not specify identifiable government records and therefore requires the Custodian to conduct research to determine which, if any, government records are responsive to the request. The Custodian states that the New Jersey Superior Court has held that while OPRA provides an alternative means of access

¹ No legal representation listed on record.

² Represented by Mark S. Tabenkin, Esq. (Camden, NJ).

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

⁴ The Custodian’s response was signed by “Michael Mevoli for Maria Efstratiades, Custodian of Records.”

⁵ The Custodian certifies in the Statement of Information that she received the Complainant’s OPRA request on August 8, 2011.

to government records 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. MAG Entertainment, LLC. v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian also states that the court held “under 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.” The Custodian also cites to 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).

The Custodian states that the County can only search for specific records. The Custodian also states that pursuant to MAG, *supra*, when a request is so complex because it fails to specifically identify the records sought, then that request is not encompassed by OPRA.

August 17, 2011

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

- Complainant’s OPRA request dated August 8, 2011
- Custodian’s response to the OPRA request dated August 15, 2011

The Complainant states that he submitted his OPRA request on August 8, 2011 for all documents (sources, letters, contracts, correspondence, e-mail, notes, telephone records) used by Freeholder Louis Cappelli in his published letter entitled, “Camden Needs a New Kind of Police Force,” dated August 4, 2011. The Complainant states that the items requested specifically pertained to the following statements: “breathing bonus,” “22% shift differential,” “50% absentee rate” and “200,000 senior officer pay” concerning the Camden Police Department.

The Complainant contends that because the requested records are contained in only one (1) letter written by Freeholder Cappelli, it should be very easy for the Custodian to locate the requested records, if said records actually exist. The Complainant asserts that the Custodian simply needs to ask the Freeholder for the records. The Complainant states that the Custodian denied access to his OPRA request on August 15, 2011 on the basis that the request is overly broad and/or unclear.

Additionally, the Complainant does not agree to mediate this complaint.

August 25, 2011

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

August 30, 2011

Letter from Custodian's Counsel to GRC. Counsel requests an extension of time to submit the Custodian's completed SOI until September 12, 2011. Counsel states that the Custodian is currently out of the office and will not return until "next week."

August 30, 2011

E-mail from GRC to Custodian's Counsel. The GRC grants an extension of time until September 13, 2011 for Counsel to submit the Custodian's completed SOI.

September 9, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated August 8, 2011
- Custodian's response to the OPRA request dated August 15, 2011

The Custodian certifies that she received the Complainant's OPRA request on August 8, 2011 and denied the request via letter dated August 15, 2011 on the basis that the request failed to identify a specific government record.

The Custodian asserts that a custodian is not required to conduct research in order to provide information or responses to questions under OPRA. The Custodian states that the GRC's *Handbook for Records Custodians* (Fifth Edition, January 2011) provides, "[a] custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant's OPRA request. A custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad and unclear OPRA request." *Id.* at p. 20 (boldface and italics in the original).

The Custodian references the following prior court decisions regarding the invalidity of an OPRA request which fails to identify specific government records: 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) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

Further, the Custodian states that in Kohn v. Township of Livingston (Essex), GRC Complaint No. 2009-313 (February 2011), the mayor stated at a public meeting that construction for the township's new library cost \$11,335,256.00. The requestor sought production of the backup material that supports the March 23, 2009 public statement at the Council meeting that construction for the Library cost \$11,335,256.00. The Custodian in this instant complaint states that the custodian in Kohn indicated to the GRC that even attempting to satisfy this request would involve, at the very least, questioning the mayor about his thought process regarding his statements in a public meeting, but that OPRA imposes no obligation on the mayor to explain his statements. The Custodian states that the Council held:

"Because the Complainant's request Item No. 2 fails to identify specific government records and requires the Custodian to conduct research in order to determine the records which may be responsive to the request

item, the Complainant's request Item No. 2 is invalid under OPRA 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 of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009)."

The Custodian asserts that a similar analysis applies to this instant complaint because the Complainant seeks unidentified records which might support statements made in Freeholder Director Cappelli's letter to a newspaper, or records which were relied upon in preparing said letter. The Custodian contends that as in Kohn, satisfying this request would require questioning Freeholder Director Cappelli about his thought process in preparing his letter to the newspaper. Thus, the Custodian asserts that the Complainant's OPRA request is overly broad and is not a valid request.

Additionally, the Custodian certifies that she did not conduct any search for the requested records because the Complainant's request is overly broad and invalid.

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 Records Management Services is not applicable.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

"...[t]he public agency shall have the burden of proving that the denial of access is authorized by law..." N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Complainant stated that he submitted his OPRA request on August 8, 2011 for all documents (sources, letters, contracts, correspondence, e-mail, notes, telephone records) used by Freeholder Louis Cappelli in his published letter entitled, “Camden Needs a New Kind of Police Force,” dated August 4, 2011. The Complainant stated that the items requested specifically pertained to the following statements: “breathing bonus,” “22% shift differential,” “50% absentee rate” and “200,000 senior officer pay” concerning the Camden Police Department.

The Complainant contended that because the requested records are contained in only one (1) letter written by Freeholder Cappelli, it should be very easy for the Custodian to locate the requested records, if said records actually exist. The Complainant asserted that the Custodian simply needed to ask the Freeholder for the records.

However, the Custodian certified that she denied the Complainant’s request via letter dated August 15, 2011 on the basis that the request failed to identify a specific government record. In support of her denial, the Custodian references the following prior court decisions regarding the invalidity of an OPRA request which fails to identify specific government records: 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) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

Further, the Custodian cited to Kohn v. Township of Livingston (Essex), GRC Complaint No. 2009-313 (February 2011), wherein the mayor stated at a public meeting that construction for the township’s new library cost \$11,335,256.00. The requestor sought production of the backup material that supports the March 23, 2009 public statement at the Council meeting that construction for the Library cost \$11,335,256.00. The Custodian in this instant complaint stated that the custodian in Kohn indicated to the GRC that even attempting to satisfy this request would involve, at the very least, questioning the mayor about his thought process regarding his statements in a public meeting, but that OPRA imposes no obligation on the mayor to explain his statements. The Custodian stated that the Council held:

“Because the Complainant’s request Item No. 2 fails to identify specific government records and requires the Custodian to conduct research in order to determine the records which may be responsive to the request item, the Complainant’s request Item No. 2 is invalid under OPRA 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 of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).”

The Custodian asserted that a similar analysis applies to this instant complaint because the Complainant seeks unidentified records which might support statements made in Freeholder Director Cappelli’s letter to a newspaper, or records which were relied upon in preparing said letter. The Custodian contended that as in Kohn, satisfying this request would require questioning Freeholder Director Cappelli about his thought process in preparing his letter to the newspaper. Thus, the Custodian asserted that the Complainant’s OPRA request is overly broad and is not a valid 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). The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency’s files.*” (Emphasis added.) *Id.* at 549.

In determining that MAG Entertainment’s request for “all documents or records” from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

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

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶ 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.”⁷

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁷ As stated in Bent, *supra*.

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J.Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...”

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

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

The OPRA request at issue here does name some types of records (letters, contracts, e-mails). However, said request still requires a level of research on the Custodian’s part, which is not required under OPRA. The request seeks records that Freeholder Director Cappelli used to verify “breathing bonus,” “22% shift differential,” “50% absentee rate” and “200,000 senior officer pay,” statements that the Freeholder made in a published letter. Locating the requested records here is not as simple as in Burnett where the custodian needed to search for an identifiable settlement agreement. Here, the Complainant’s request more closely resembles the request at issue in Kohn, *supra*, where the Council held that said request:

“would have forced the Custodian to research his files to identify all of the records that would support the ‘March 23, 2009 public statement at the Council meeting that construction for the Library cost \$11,335,256.’ OPRA does not ‘countenance open-ended searches of an agency’s files.’ MAG, *supra*.”

The request here does not seek specifically identifiable government records, but rather seeks records which the Custodian would be required to conduct research to find. Specifically, the Custodian would have to determine which records, if any, were utilized by the Freeholder to verify specific statements made in a public letter.

Therefore, because the Complainant’s request fails to identify specific government records and requires the Custodian to conduct research in order to determine the records which may be responsive to the request item, the Complainant’s request is

invalid under OPRA pursuant to MAG, *supra*, Bent, *supra*, New Jersey Builders, *supra*, Schuler, *supra*, and Kohn, *supra*. As such, the Custodian has not unlawfully denied access to said request.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's request fails to identify specific government records and requires the Custodian to conduct research in order to determine the records which may be responsive to the request item, the Complainant's request is invalid under OPRA 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), and Kohn v. Township of Livingston (Essex), GRC Complaint No. 2009-313 (February 2011). As such, the Custodian has not unlawfully denied access to said request.

Prepared By: Dara L. Barry
Communications Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

November 20, 2012⁸

⁸ This complaint was prepared and scheduled for adjudication at the Council's November 27, 2012 meeting; however, said meeting was cancelled due to lack of quorum.