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
Commissioner

FINAL DECISION

December 18, 2012 Government Records Council Meeting

Nancy L. Held
Complainant
v.
Tewksbury First Aid & Rescue Squad (Hunterdon)
Custodian of Record

Complaint No. 2011-303

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:

1. Because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant's request requires an open-ended search of the Tewksbury First Aid & Rescue Squad's records, the Complainant's September 6, 2011 request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). *See also* Nugent v. Ocean County College (Ocean), GRC Complaint No. 2009-143 (May 2010), Burke v. Borough of Brielle (Monmouth), GRC Complaint No. 2008-65 (September 2009) and Toscano v. New Jersey Department of Treasury, GRC Complaint No. 2010-149 (May 2011).

2. Because the Tewksbury First Aid & Rescue Squad is a non-profit charitable organization created and maintained by volunteer emergency medical technicians and was not created as an instrumentality of the Township of Tewksbury, the Squad is not a public agency for purposes of OPRA pursuant to N.J.S.A. 47:1A-1.1. and Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011). *See also* Chaves v. JFK Medical Center (Middlesex), GRC Complaint No. 2009-217 (March 2011), Nash v. Children's Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006) and Cole v. Newton Memorial Hospital, GRC Complaint No. 2009-68 (February 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 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

Nancy L. Held[1] **GRC Complaint No. 2011-303**
Complainant

v.

Tewksbury First Aid & Fire Squad (Hunterdon)[2]
Custodian of Records

Records Relevant to Complaint: Copies of records from 2006 through 2011 showing the number and location of medevac landings in the Township of Tewksbury ("Township").

Request Made: September 6, 2011
Response Made: September 7, 2011
Custodian: Paul Zanelli
GRC Complaint Filed: September 20, 2011[3]

Background

September 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.

September 7, 2011
Chief Zanelli's response to the OPRA request. Chief Zanelli responds in writing via e-mail[4] to the Complainant's OPRA request on the first (1st) business day following receipt of such request. Chief Zanelli states that the Tewksbury First Aid & Rescue Squad ("Squad") is not a public agency subject to OPRA.

September 20, 2011
Denial of Access Complaint filed with the Government Records Council ("GRC") with no attachments.

The Complainant states that on September 6, 2011, she submitted an OPRA request to Ms. Shana Goodchild ("Ms. Goodchild"), seeking records showing the number and location of all medevac landings within the Township. The Complainant states that

[1] No legal representation listed on record.
[2] Represented by Louis A. Ruprecht, Esq., of Ruprecht, Hart, Weeks & Ricciardulli, LLP (Millburn, NJ).
[3] The GRC received the Denial of Access Complaint on said date.
[4] Neither party attached a copy of this e-mail as part of their submissions.

Ms. Goodchild requested the records from Chief Zanelli. The Complainant states that Chief Zanelli denied the OPRA request stating that the Squad was not subject to OPRA. The Complainant states that Ms. Goodchild advised her that the Township was not the custodian of record for the records sought and could do no more to provide access.

The Complainant agrees to mediate this complaint.

October 17, 2011
Offer of Mediation sent to Chief Zanelli.

October 18, 2011
Chief Zanelli agrees to mediate this complaint.

October 18, 2011
Complaint referred to mediation.

October 18, 2011
Complaint referred back from mediation.

October 19, 2011
Request for the Statement of Information ("SOI") sent to Chief Zanelli.

October 25, 2011
Letter from Squad Counsel to the Complainant. Counsel states that he has reviewed all applicable statutes and cases interpreting what constitutes a public agency under OPRA and has determined that the Squad is not a public agency subject to OPRA. Counsel states that he has thus instructed the Squad that the Complainant's OPRA request is improper and that no response is necessary.

October 27, 2011
Letter from GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for an SOI on October 19, 2011 and to date has not received a response. Further, the GRC states that if the SOI is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

October 31, 2011
E-mail from the GRC to Squad Counsel. The GRC states that it recently received a letter from Counsel to the Complainant dated October 25, 2011 in which Counsel contends that the Squad is not a public agency under OPRA. The GRC states that the deadline to submit an SOI is November 1, 2011.

November 1, 2011
E-mail from Squad Counsel to the GRC. Counsel requests an extension of time until November 7, 2011 to submit the relevant SOI because he just received the SOI materials and believes that the Squad is not subject to OPRA.

November 1, 2011

E-mail from the GRC to Squad Counsel. The GRC grants Counsel an extension of time until November 7, 2011 to submit the SOI.

November 3, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated September 6, 2011.
- Letter from Squad Counsel to the Complainant dated October 25, 2011.
- Constitution of the Squad.

Chief Zanelli certifies that he did not search for any records because he believes that the Squad is not a public agency under OPRA

Chief Zanelli also certifies that the Squad keeps all run sheets for an indefinite period of time. Chief Zanelli certifies that no 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.

Chief Zanelli states that the Township forwarded the Complainant's OPRA request to him on September 6, 2011. Chief Zanelli certifies that shortly after receipt of the OPRA request, he e-mailed the Complainant advising that the Squad was not a public agency subject to the provisions of OPRA. Chief Zanelli further certifies that Counsel reiterated this point in a letter to the Complainant dated October 25, 2011.

Chief Zanelli certifies that the Squad is a non-profit 501(c)(3) corporation composed of all volunteers from the Township and surrounding areas. Chief Zanelli certifies that the Squad has no paid staff and does not employee persons serving as emergency medical technicians ("EMT") or paramedics. Chief Zanelli certifies that the Township has no control over the Squad, does not appoint members or officers and does not direct the activities of the Squad.

Chief Zanelli contends that the Squad is not a public agency. Chief Zanelli further asserts that if he were required to comply with the Complainant's OPRA request, he would have to spend many hours searching boxes of records because the records are not held electronically. Chief Zanelli certifies that over the five (5) year period identified in the Complainant's OPRA request, the Squad has responded to between 2,400 and 2,500 calls. Chief Zanelli certifies that each call has a record that would need to be reviewed individually.

Chief Zanelli asserts that he sought advice from Counsel and determined that the Squad does not meet any of the criterion of a public agency. Chief Zanelli states that for example, the Squad would be a public agency if it performed "a specific governmental function affecting the rights, duties, obligations, privileges, benefits or other legal relations of any person." (Citation Omitted.) Chief Zanelli argues that the Squad is a private not-for-profit corporation organized and operated exclusively for charitable purposes and is not an "… instrumentality or agency created by a political subdivision nor does it perform a 'governmental function' as defined by the Supreme Court." Chaves

v. JFK Medical Center (Middlesex), GRC Complaint No. 2009-217 (March 2011). Chief Zanelli also asserts that the Council held that to be a public agency, that agency must have a "collective authority to spend public funds." *Id.*

Chief Zanelli certifies that the Township had no role in creating the Squad: the volunteer EMTs created the Squad. Chief Zanelli further certifies that the Squad occupies a building it constructed using donations solicited by the residents of the Township and also purchased vehicles and equipment. Chief Zanelli certifies that the Squad conducts benefits to raise funds which are run by the volunteers. Chief Zanelli certifies that he has a full time job and spends many hours of his personal time volunteering for service with the Squad. Chief Zanelli contends that if he was required to respond to the Complainant's request, he would spend voluminous hours obtaining the records. Chief Zanelli further notes that he rejected the Complainant's request to review the records on her own based on the personal information contained in the records.

In support of Chief Zanelli's position, Counsel states that the Supreme Court set forth the test for determining whether an entity is a public agency in Times of Trenton Pub. Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519 (2005). Counsel states that the Supreme Court recently clarified that an agency was deemed a public agency when created by a combination of political subdivisions that provided a function on behalf of those divisions. Fair Share Housing Center v. NJ State League of Municipalities, 207 N.J. 409 (2011). Counsel contends that none of these factors apply to the Squad.

Counsel asserts that the Council's decision in Chaves is applicable here. *See also* Nash v. Children's Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006) and Cole v. Newton Memorial Hospital, GRC Complaint No. 2009-68 (February 2010). Counsel states that in Chaves, *supra*, the Council held that the hospital, a non-profit corporation that renders medical care, was not a public agency. Counsel states that the Council noted that the hospital's purpose was to render medical care which did not classify as a "… specific governmental [function] affecting the rights, duties, obligations, privileges, benefits or other legal relations of any other person." *Id.* Counsel contends that the Squad similarly is a non-profit corporation that renders medical care and is thus not a public agency under OPRA.

Counsel further states that the Council noted in Chaves, *supra*, that the hospital's Certificate of Incorporation contained a dissolution provision designed to distribute assets to other non-profit agencies engaged in charitable work. Counsel states that the Squad's Constitution contains a similar provision. *Id.* at Sec. 6.

Counsel contends that the Squad's position is more compelling than that of the defendants in Chaves, *supra*, Nash, *supra*, and Cole, *supra*, because the Squad is entirely volunteer. Counsel asserts that OPRA contains no provisions suggesting that the Legislature intended volunteer organizations to be subject to OPRA. Counsel contends that the burden placed on a volunteer agency if determined to be subject to OPRA would be stifling. Counsel asserts that given the current climate of reduced volunteerism, determining that organizations similar to the Squad are subject to OPRA would be overly burdensome.

November 7, 2011

E-mail from the Township's Counsel to the GRC. Counsel states that she is in receipt of Squad's SOI and wanted to clarify a few inaccuracies. Counsel states that the Squad is currently housed in a building owned by the Township that the Squad rents for $1.00 a year. Counsel states that this is inapposite to Chief Zanelli's certification that the Squad built a building using donations. Counsel further states that the Township provides the Squad with funds in excess of $40,000 annually.

November 7, 2011

E-mail from Chief Zanelli to the GRC. Chief Zanelli states that he was not chief at the time the Squad moved to its current location, but was aware that the Squad put a portion of money into construction and there was a grant involved.

November 16, 2011

Chief Zanelli's supplemental legal certification. Chief Zanelli states that the following is in response to the Township Counsel's November 7, 2011 e-mail. Chief Zanelli certifies that the Squad built the building using its funds, a loan from the New Jersey Department of Community Affairs ("DCA"), and a donation from the Township. Chief Zanelli certifies that because the building was on public land, it necessarily became part of the Township's property for which the Township maintains ownership. Chief Zanelli certifies that the Squad pays $1.00 a year to lease the building.

Chief Zanelli further certifies that the monies the Township provides to the Squad are donations that represent about a third of the Squad's revenues. Chief Zanelli certifies that the Township also makes annual donations to other fire companies and rescue squads that serve the Township's residents.

Chief Zanelli asserts that neither the ownership of the building or Township's donations change the fact that the Squad is a private non-profit corporation run by volunteers that provide medical services to the Township's residents.

Analysis

Whether the Complainant's September 6, 2011 request is valid under OPRA?

The Complainant's request at issue herein sought "… records from 2006 through 2011 showing the number and location of medevac landings …" in the Township. The request seeks an unspecified type of record that will show certain information of interest to the Complainant.

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.

> "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.*

In addition, 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 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]

Moreover, 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…" 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…" Accordingly, the test under MAG then, is whether a requested record is a ***specifically identifiable*** government record.

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:

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

[6] As stated in Bent, *supra*.

"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.
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 [Items No.] 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] and [Bent]."

The Council has previously applied such an analysis for requests seeking unspecified records. In Nugent v. Ocean County College (Ocean), GRC Complaint No. 2009-143 (May 2010), the complainant sought "records showing …" certain information. The Council determined that the complainant's request "is a blanket request for information contained within a class of various records rather than a request for specific identifiable government records." *Id.* The Council similarly held that requests for "records" were invalid in Burke v. Borough of Brielle (Monmouth), GRC Complaint No. 2008-65 (September 2009) and Toscano v. New Jersey Department of Treasury, GRC Complaint No. 2010-149 (May 2011).

Here, the Council's past decisions apply. The Complainant sought "records" containing certain information. The Complainant's failure to request specific, identifiable government records would have forced a custodian to research his/her records in order to locate those records containing the sought after information. Thus, the Complainant's request is invalid.

Therefore, because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant's request requires an open-ended search of the Squad's records, the Complainant's September 6, 2011 request is invalid pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*. *See also* Nugent, *supra*, Burke, *supra*, and Toscano, *supra*.

Whether the Tewksbury First Aid & Rescue Squad is a public agency subject to the provisions of OPRA?

OPRA defines a public agency as:

"…[a]ny of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of

> the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions." N.J.S.A. 47:1A-1.1.

Although the GRC has already determined that the Complainant's request is invalid, it is in the public interest to settle the issue of whether the Squad is a public agency for purposes of OPRA. Therefore, the GRC will address this issue notwithstanding the fact that the Complainant's request is invalid under OPRA.

Most definitions of "public agency" under New Jersey statutes and the Administrative Code resemble that contained in OPRA. However, the Open Public Meetings Act ("OPMA") contains a definition of a "public body" which requires that an entity, "... (1) consist of 'two or more persons' and (2) be 'collectively empowered as a voting body' (3) 'to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits or other legal relations of any person or collectively authorized to spend public funds.' N.J.S.A. 10:4-8a." The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 368 N.J. Super. 425 (App. Div. 2004).

In Lafayette Yard, the Appellate Division held that Lafayette Yard was both a "public body" subject to the open meetings requirements of the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., and a "public agency" required under OPRA, and ordered disclosure of records to plaintiff.

In so doing, the Court noted the definition of a "public agency" in OPRA at N.J.S.A. 47:1A-1.1. and held that:

> (1) a private, non-profit corporation created for the express purpose of redeveloping property donated to it by the City of Trenton,
> (2) having a Board of Trustees appointed by the Mayor and City Council,
> (3) with the mandated reversion of the donated property after the completion of the project and repayment of the debt,
> (4) having corporate bylaws requiring the distribution of all assets to the city upon the dissolution or liquidation of the corporation,
> (5) having a Disposition Agreement with the city that designates the city as the "agency" and the corporation as the "redeveloper" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49, and
> (6) having the authority to issue tax-exempt bonds for the financing of the project

> qualified the corporation as a 'public body' under OPMA. The [C]ourt further held that the corporation was 'an 'instrumentality' created by the City and a 'public agency' under the OPRA for essentially the same reasons that it is a 'public body' under the OPMA.'" *Id.* at 442.

The decision of the Superior Court that Lafayette Yard qualified as a "public body" was affirmed by the New Jersey Supreme Court (The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519 (2005)). *See also* Snyder v. American Association of Blood Banks, 144 N.J. 269 (1996)(finding that the legislature did not create or authorize the AABB to perform a specific governmental purpose); Williams v. National Car Rental System, Inc., 225 N.J. Super. 164 (1988)(finding that the broad powers conferred upon the Port Authority leave no doubt that it is a public authority or public agency); Blazer Corporation v. NJ Sports and Exposition Authority, 195 N.J. Super. 542 (1984)(citing Wade v. N.J. Turnpike Authority, 132 N.J. Super. 92 (Law Div. 1975), ("The Court noted the official comment to N.J.S.A. 59:1-3: 'The definition of 'Public Entity' provided in this section is intended to be all inclusive and to apply uniformly throughout the State of New Jersey to all entities exercising governmental functions.'").

More recently, in Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011), the Supreme Court was tasked with reviewing the Appellate Division's decision holding that the New Jersey State League of Municipalities ("League") the League is not a public agency under OPRA. 413 N.J. Super. 423. The Court acknowledged that although the Appellate Division relied on its previous holding in Lafayette Yard, it erred in "… importing into OPRA's definition of 'public agency' the definition of a 'public body' found in [OPMA] … [t]he language defining a 'public body' … under OPRA are distinctly different." *Id.* at 504-505. The Court thus held that a creation test, as opposed to a governmental function test, controlled in determining whether an entity was a public agency for purposes of OPRA. Specifically, the Court held that:

> "In Lafayette Yard, we remained faithful to the text of [OPRA] and determined that, in essence, the nonprofit corporation (an 'instrumentality') was *created* by a public subdivision therefore making it a 'public agency.' *See id*. at 535-36 … The creation test, not the governmental-function test, controlled. Our decision in this case, finding that the [League] is a 'public agency,' is wholly consistent with … Lafayette Yard." *Id.* at 507.

Thus, the GRC must apply the creation test in determining whether the Squad is a "public agency" under OPRA.

In support of the Squad's argument in the SOI, Chief Zanelli certified that the Squad was created by volunteer EMTs and not the Township. Chief Zanelli further certified that all members are strictly volunteers and that the Squad operates on donations. Chief Zanelli certified that the Squad paid for construction of its current building, vehicles and equipment with these donations. The Squad Counsel argued that the facts herein are similar to the facts presented in Chaves v. JFK Medical Center

(Middlesex), GRC Complaint No. 2009-217 (March 2011), Nash v. Children's Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006) and Cole v. Newton Memorial Hospital, GRC Complaint No. 2009-68 (February 2010). Specifically, Counsel argued that the entities in these complaints were non-profit corporations rendering medical care. Counsel argued that the Squad's case is more compelling because it is an entirely volunteer organization. Counsel noted that the Squad's Constitution contained a dissolution provision similar to that of the entity in Chaves.

The Township's Counsel sent an e-mail to the GRC on November 7, 2011 stating that Township owns the building in which the Squad is housed and which the Squad rents from the Township for $1.00 a year. Counsel further stated that the Township provides the Squad with funds in excess of $40,000 a year.

Chief Zanelli submitted a supplemental certification on November 16, 2011 in which he certified that the Squad built the building using its funds, a loan from DCA and a donation from the Township. Chief Zanelli certified that because the building was built on Township land, it became part of the Township's real estate stock; thus, the Squad pays rent. Chief Zanelli further certified that, as is the case with all other fire companies and rescue squads serving Township residents, the Township donates money to the Squad on an annual basis. Chief Zanelli finally asserted that building ownership or donations from the Township does not change the fact that the Squad is not a public agency for purposes of OPRA.

As part of the creation test, the GRC looks to the Squad's Constitution and the differences it draws from the League of Municipalities in Fair Share Housing Center, *supra*. The GRC first notes that the Squad is a non-profit entity, as is the League. Although both are non-profit corporations, this designation does not necessarily imply that an entity is not a public agency. However, the Squad's Constitution does allow any members of the Squad to participate in campaigns to influence legislation, or in essence act as an instrumentality of the Township. Article I, Section 5. This factor weighed heavily in the Court's holding in Fair Share Housing Center that the League, in acting on behalf of membership to lobby government, was a public agency.

Moreover, Article II and Article III of the Squad's Constitution further set forth meeting procedures, voting procedures and officer positions whereby only members of the Squad participate. The Constitution contains no provisions for the Township to actively work within or control the Squad's operations. Further, as noted by Counsel, Article I, Section 6 of the Constitution contains a dissolution provision that is similar to the dissolution provision in Chaves, *supra*. Essentially, the Constitution never speaks to any role played by the Township in creating the Squad and only speaks to the volunteer members and their roles in maintaining the proper operation of the Squad.

Based on the creation test enunciated by the New Jersey Supreme Court in Fair Share Housing Center, *supra,* the evidence submitted by the Custodian, specifically the Squad's Constitution, established that the Squad is not a public agency. The GRC is not convinced that merely because the Squad receives donations or rents a building from the Township, it is a public agency. Simply put, the Squad was created by and is run by the

members of the Squad, with no oversight from the Township. Thus, the Squad cannot be a public agency as described in OPRA. N.J.S.A. 47:1A-1.1.

Therefore, because the Squad is a non-profit charitable organization created and maintained by volunteer EMTs and was not created as an instrumentality of the Township, the Squad is not a public agency for purposes of OPRA pursuant to N.J.S.A. 47:1A-1.1. and Fair Share Housing Center, *supra*. *See also* Chaves v. JFK Medical Center (Middlesex), GRC Complaint No. 2009-217 (March 2011), Nash v. Children's Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006) and Cole v. Newton Memorial Hospital, GRC Complaint No. 2009-68 (February 2010).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant failed to identify with reasonable clarity the records sought, and because the Complainant's request requires an open-ended search of the Tewksbury First Aid & Rescue Squad's records, the Complainant's September 6, 2011 request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). *See also* Nugent v. Ocean County College (Ocean), GRC Complaint No. 2009-143 (May 2010), Burke v. Borough of Brielle (Monmouth), GRC Complaint No. 2008-65 (September 2009) and Toscano v. New Jersey Department of Treasury, GRC Complaint No. 2010-149 (May 2011).

2. Because the Tewksbury First Aid & Rescue Squad is a non-profit charitable organization created and maintained by volunteer emergency medical technicians and was not created as an instrumentality of the Township of Tewksbury, the Squad is not a public agency for purposes of OPRA pursuant to N.J.S.A. 47:1A-1.1. and Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011). *See also* Chaves v. JFK Medical Center (Middlesex), GRC Complaint No. 2009-217 (March 2011), Nash v. Children's Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006) and Cole v. Newton Memorial Hospital, GRC Complaint No. 2009-68 (February 2010).

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

November 20, 2012[7]

[7] 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.