



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

April 30, 2013 Government Records Council Meeting

Paul Marzan
Complainant

Complaint No. 2011-360

v.

New Jersey Department of Community Affairs,
Division of Housing & Community Resources
Custodian of Record

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the March 15, 2013¹ Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that although the Custodian denied access to the Complainant’s OPRA request pursuant to Executive Order No. 26 (McGreevey 2002), the Complainant’s OPRA request is invalid because the request fails to specifically identify any government records 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), or Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). As such, the Custodian has not unlawfully denied access to the Complainant’s request, and the Council declines to determine whether the Custodian’s asserted exemption applies to any potentially responsive records.

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 30th Day of April, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council

¹ This complaint was originally prepared for the Council’s March 22, 2013 meeting; however, the complaint could not be adjudicated due to a lack of quorum.



I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: May 3, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 30, 2013 Council Meeting**

**Paul Marzan¹
Complainant**

GRC Complaint No. 2011-360

v.

**NJ Department of Community Affairs,
Division of Housing and Community Resources²
Custodian of Records**

Records Relevant to Complaint: Copies of:

1. Any and all documents related to Chastity Goss' application for Section 8 assistance regarding her residence³ including correspondence with Donnelle Welch and her qualifications or lack thereof.
2. Any and all documents related to Chastity Goss' application for Section 8 assistance regarding her residence⁴ including correspondence with Donnelle Welch and her qualifications and lease.
3. All information submitted to Donnell Welch at Section 8 by Chastity Goss or Paul Marzan for Section 8 housing aid regarding residence.⁵

Request Made: October 19, 2011

Response Made: October 27, 2011

GRC Complaint Filed: November 23, 2011⁶

Background⁷

Request and Response:

On October 19, 2011, the Complainant submitted an Open Public Records Act ("OPRA") request seeking the above listed records. On October 27, 2011, the sixth (6th) business day

¹ No legal representation listed on record.

² Roseanne Rizza, Custodian of Records; however, Robert N. Wright, Jr. responded to the Complainant's OPRA request. The Custodian indicated in her Statement of Information that she is represented by DAG Patricia Stern, on behalf of the NJ Attorney General; however, DAG Stern did not make any submissions to the GRC regarding this complaint.

³ The Complainant provides a specific home address; however, the GRC declines to do so here.

⁴ The Complainant provides a specific home address; however, the GRC declines to do so here.

⁵ The Complainant provides a specific home address; however, the GRC declines to do so here.

⁶ The GRC received the Denial of Access Complaint on said date.

⁷ The parties may have submitted additional correspondence, or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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following the Custodian's receipt of the request, Robert N. Wright, Jr., denied the Complainant's OPRA request via e-mail. Specifically, Mr. Wright stated that the requested records are exempt from public access pursuant to Executive Order No. 26, which protects personal financial information. Mr. Wright stated that the Section 8 program is restricted to low income individuals and, as such, any records relating to the participation of an individual into the Section 8 program would disclose personal financial information.

Denial of Access Complaint:

On November 23, 2011, the Government Records Council ("GRC") received the Complainant's Denial of Access Complaint challenging the Custodian's denial of access to the requested records. The Complainant asserts that he is already aware that Chastity Goss is a low income individual because she included her income information on a rental application for his property.

Statement of Information:

On February 10, 2012, the GRC received the Custodian's Statement of Information ("SOI") in response to the Complainant's Denial of Access Complaint. The Custodian certifies that Robert N. Wright, Jr. denied the Complainant's OPRA request on October 27, 2011. The Custodian contends that the records requested are exempt from public access pursuant to Executive Order No. 26 (McGreevey 2002), which exempts "information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness..." The Custodian certifies that the application process for the Section 8 program includes submission by the applicant of detailed personal and financial information including income, bank account numbers and social security numbers of all household members. Further, the Custodian asserts that she has "a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy" pursuant to N.J.S.A. 47:1A-1.

Analysis⁸

Unlawful Denial of Access

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.

A complainant's OPRA request, however, must be a valid one under the law. 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*

⁸ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

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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),⁹ 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."¹⁰

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)."

Here, the Complainant challenges the Custodian's denial of access pursuant to Executive Order No. 26 (McGreevey 2002) which exempts from public access "information describing a

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁰ As stated in Bent, *supra*.

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natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness..." However, the Complainant's OPRA request is not a valid OPRA request.

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.

Here, the Complainant submitted a three (3) item request seeking "any and all documents..." and "any and all information..." *Documents* and *information* are not specific records and do not meet the level of specificity required to be a valid OPRA request under MAG, *supra*, Bent, *supra*, New Jersey Builders, *supra*, or Schuler, *supra*. The Complainant's request items seek an open-ended search of the agency's file regarding Chastity Goss' Section 8 application records. The court in MAG specifically held that such an open-ended search is not valid under OPRA.

Therefore, although the Custodian denied access to the Complainant's OPRA request pursuant to Executive Order No. 26 (McGreevey 2002), the Complainant's OPRA request is invalid because the request fails to specifically identify any government records pursuant to MAG, *supra*, Bent, *supra*, New Jersey Builders, *supra*, or Schuler, *supra*. As such, the Custodian has not unlawfully denied access to the Complainant's request, and the Council declines to determine whether the Custodian's asserted exemption applies to any potentially responsive records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that although the Custodian denied access to the Complainant's OPRA request pursuant to Executive Order No. 26 (McGreevey 2002), the Complainant's OPRA request is invalid because the request fails to specifically identify any government records 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), or Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). As such, the Custodian has not unlawfully denied access to the Complainant's request, and the Council declines to determine whether the Custodian's asserted exemption applies to any potentially responsive records.

Prepared By: Dara L. Barry
Communications Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

March 15, 2013¹¹

¹¹ This complaint was originally prepared for the Council's March 22, 2013 meeting; however, the complaint could not be adjudicated due to a lack of quorum.
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